TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908

No. [illegible] 43.

SOUTHERN REALTY INVESTMENT COMPANY, PLAINTIFF IN ERROR,

vs.

NANCY WALKER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED MARCH [illegible], [illegible].

(20,619.)

(20,618.)

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vs.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

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0 *Declaration in Ejectment.*

In the Fifth Circuit Court of the United States for the Wsetern Division of the Southern District of Georgia.

John Doe, on the Demise of Southern Realty Investment Company,
v.
Richard Roe, Casual Ejector, and Nancy Walker, Tenant in Possession.

At Law. Ejectment.

Plaintiff's Declaration in Ejectment.

To the Circuit Court of the United States for the Western Division of the Southern District of Georgia:

The petition of John Doe respectfully shows that Richard Roe unjustly detains from him twenty five hundred dollars, for that whereas heretofore to-wit, on the 1st day of April 1895, Southern Realty Investment Company, a corporation resident of the County of Beadle in the State of South Dakota, and a citizen of said State of South Dakota, demised to your petitioner lot of land No. Two Hundred and Seven in the Third District of originally Irwin, now Wilcox County, containing 490 acres, and which is of the value of twenty five hundred dollars to have and to hold the same to your petitioner and his assigns from the 1st day of April 1895, for and during and unto the full end and term of fifty years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise, your petitioner entered into said tenements with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted as aforesaid. And your petitioner being so thereof possessed, the said Richard Roe afterwards, to-wit, on the 1st day of April 1900 with force and arms entered into said tenements, with the appurtenances, in which your petitioner was so interested in manner and for the term aforesaid, which is not expired, and ejected your petitioner out of his said farm and other wrongs to your petitioner then and there did, against the peace and dignity of the said State and to the damage of your petitioner of twenty five hundred Dollars.

And petitioner further shows that said Richard Roe owes
1 to and unjustly detains from him the further sum of twenty
five hundred dollars; for that the said Richard Roe heretofore, to-wit, on the day and year aforesaid, with force and arms broke and entered said tenements of your petitioner, above described, and ejected expelled, put out and amoved your petitioner from his said possession and occupation thereof, and kept and continued him therefrom so expelled and amoved for a long space of time to-wit, from day and year aforesaid until the day and year of the institution of this action, and still keeps petitioner amoved and put out of the possession and occupancy of said land; and during that time took and had (and

still takes and has) and receives to his own use and benefit all the issues and profits of said land, with its appurtenances, being of great yearly value, to-wit, of the yearly value of three hundred dollars; whereby petitioner, during all the time aforesaid, not only lost the issues and profits of said land, with its appurtenances, but was deprived of the use and means of cultivating the same, and was forced to, and did necessarily, lay out and expend divers large sums of money, amounting in the aggregate sum of one thousand dollars in and about the recovering of the possession of said land, with the appurtenances, and other wrongs and injuries to petitioner then and there did, against the peace of said State, and to the damage of petitioner twenty five hundred dollars.

Wherefore petitioner brings suit, and prays process may issue requiring the defendant personally or by attorney to be and appear at the Circuit Court to be held in and for the Western Division of the Southern District of Georgia at Macon, Georgia, on the first Monday in May, 1905 to answer petitioner's complaint.

The real plaintiff herein is a citizen of the State of South Dakota, and the real defendant is a citizen of the State of Georgia residing in the County of Wilcox in the Western Division of the Southern District of Georgia.

HAYGOOD & CUTTS,
Plaintiff's Attorneys, Fitzgerald, Ga.

2 To Nancy Walker of Wilcox County, Georgia, a citizen of the State of Georgia:

I am informed that you are in possession of, or claim title to, the premises in the accompanying writ mentioned, or some part thereof; and I, being sued in this action as a casual ejector only, and having no claim or title to the same do advise you to appear at the said term of said Court, by some attorney of said Court, then and there by rule of said Court to be made defendant in my stead; otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession.

This April 12th, 1905.
Yours, etc., RICHARD ROE.

3 *Process.*

UNITED STATES OF AMERICA,
Southern District of Georgia:

To the United States Marshal*l* for the Southern District of Georgia, and His Lawful Deputies:

The defendant, Nancy Walker, tenant in possession, is hereby required personally or by attorney to be and appear at the next Circuit Court for the Southwestern Division of the Southern District of Georgia, to be held at Macon, Georgia on the first Monday in May, 1905, and then and there to answer the plaintiff's complaint in the above styled action of ejectment and for me*n*se profits, as in default thereof the Court will proceed as to justice shall appertain.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States. This 14th day of April, 1905.

[L. S.] CECIL MORGAN,
Deputy Clerk.

Indorsement: No. 368. In the U. S. Circuit Court West Div. So. Dist. Ga. Southern Realty Investment Co. *vs.* Nancy Walker, Declaration in Ejectment. Origina- Verdict for Defendant June 23, 1906. Filed April 14, 1905, Cecil Morgan, Deputy Clerk. Haygood & Cutts, Attorneys.

4 *Marshal's Return of Service.*

MACON, GA., *Apr.* 17*th*, 1905.

I hereby certify, that on the 15th day of April, 1905, in Wilcox County, at eight miles, north west of Fitzgerald, Georgia, within my district, I personally served the within petition and summons on the within named Nancy Walker, by exhibiting to her this original and leaving with her a copy of same.

The return of

GEORGE F. WHITE,
United States Marshal,
By D. H. RILEY, *Deputy.*

Dated at Macon, Ga., April 17th, 1905.

Filed April 19, 1905.
CECIL MORGAN,
Deputy Clerk.

5 *Notice to Produce.*

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

SOUTHERN REALTY INVESTMENT COMPANY
vs.
NANCY WALKER.

At Law. Ejectment Plea to the Jurisdiction.

To the Honorable Judges of the Circuit Court of the United States for the Western Division of the Southern District of Georgia:

Comes now Nancy Walker, the real defendant in the above mentioned action of ejectment, brought in the John Doe form, by the Southern Realty Investment Co. as the real plaintiff against the said Nancy Walker, as tenant in possession and the real defendant, and prays the Court to require the above named plaintiff, the Southern Realty Investment Company, to produce in this Honorable Court, on the trial of the plea to the jurisdiction in said cause, on Friday, June the 15th instant, and from day to day and from term to term until said cause and particularly until said plea to the jurisdiction and the question of the jurisdiction of the Court is determined, the books and writings hereinafter mentioned, which books and writings are in the possession and power of said plaintiff, the Southern Realty Investment Company, and contain evidence pertinent to the issue of jurisdiction and material to movant's defense.

Movant, the said Nancy Walker, shows the Court that the plea to the jurisdiction in said cause, as will be seen by reference thereto, involves the question of the *bona fides* of the alleged conveyances or transfers under which the said Southern Realty Investment Company claims title and the right to sue for the land mentioned in the declaration and the mesne profits thereof, and involves the question as to whether the said plaintiff, the Southern Realty Investment Company, is a South Dakota corporation, organized and
6 doing business under the laws of the State of South Dakota,
or whether the said Southern Realty Investment Company was not in fact organized and chartered for the purpose of conferring upon this Court as a Court of the United States, an apparent jurisdiction of a controversy not properly cognizable therein, and whether the deed or transfer mentioned in the plea to the jurisdiction was not made as a part of said arrangement, and whether the procuring of the privilege of suing in the Courts of the United States for persons not in truth and in fact entitled to sue in such courts, is not in truth and in fact the prime purpose of the organization, of said corporation, and the business for which it was created and which it has carried on; and the books and writings herein mentioned, which defendant prays that said plaintiff may be required to produce, contain evidence pertinent and material to the issues raised by said plea to the jurisdiction, and movant prays the Court that the production thereof may be required in accordance with the provisions of the Act of Congress for such cases made and provided.

The books and writings which contain such evidence, and which movant prays that this Honorable Court require the said plaintiff to produce, are as follows:

1. The charter of said Southern Realty Investment Company.
2. The minute book or books of said Southern Realty Investment Company, containing the minutes of all stockholders' and directors' meetings, and all corporate proceedings from the organization of said company up to the time of the bringing of the present suit, and all such minutes, whether in book form or not.
3. The stock book or books of said Southern Realty Investment Company, together with stock certificates, stubs of stock certificates and other books and writings showing who were the original stockholders of said Southern Realty Investment Company, and who were the stockholders therein at the time of the bringing of the aforesaid suit, and at all times prior thereto, and at the time of the filing of the aforesaid plea to the jurisdiction.

7 4. Any and all contracts between the heirs at law, legatees or distributees of the late D. H. Pope, and the Southern Realty Investment Company and any and all contracts, writings and agreements between said Southern Realty Investment Co. and the person or persons under whom said Southern Realty Investment Company claims title to the land sued for in the above entitled cause of complaint, and particularly between the grantor or grantors in the deed or deeds under which said Southern Realty Investment Company claims to have immediately derived its title, and said Southern Realty Investment Co. Also between said grantor or grantors and Messrs. Haygood & Cutts, or either of them, and between Messrs. Haygood and Cutts and said Southern Realty Investment Company, relative to the subject matter of the above entitled suit or relative to said suit, or relative to the purchase of said land by the Southern Realty Investment Company, or the terms of purchase, or as to how or when or by whom and to whom the purchase price has been or is to be paid, and the contemplated services to be rendered in the conduct of litigation for the recovery of said property sued for.

5. All contracts and agreements between S. M. Cohen, and his wife, Glory Cohen, or either of them, and the said Southern Realty Investment Company, and all contracts between S. M. Cohen, and Glory Cohen, or either of them, and Messrs. Haygood & Cutts, and all contracts between Messrs. Haygood & Cutts and the Southern Realty Investment Company relative to the land mentioned and described in that certain action of ejectment pending in the Circuit Court of the United States for the Southern Division of the Southern District of Georgia, between the Southern Realty Investment Company, as plaintiff, and Isidore Gilders, tenant in possession and real defendant, and relative to the title to said land, or relative to the purchase thereof by the Southern Realty Investment Company from the said Glory Cohen, and relative to the terms of purchase, price to be paid, mode and time of payment by the said Southern Realty Investment Company for said land to said Glory Cohen or any other person.

8 6. All contracts, writings and agreements between the Southern Realty Investment Company, and S. Annie Connor and Mary A. Ham, relating to the purchase of that tract or parcel of land containing seven acres, more or less, situated lying and being in the city of Abbeville, and Wilcox County, Georgia, in the Western Division of the Southern District of Georgia, known and described as Blocks "D" and "K," according to the plat made by W. A. Coble, of the lands known as the Abbeville Land & Improvement Company survey, which plat is recorded in Deed Book N, page 45, of the clerk's office of Wilcox Superior Court, and being the land sued for by said Southern Realty Investment Company in that certain action of ejectment pending in the Circuit Court of the United States for the Western Division of the Southern District of Georgia, between said Southern Realty and Investment Company and Mrs. Emma Hall, tenant in possession, and real defendant; and all contracts and agreements relative to the prosecution of the above entitled suit and the

recovery of said land; and all contracts and agreements, receipts and writings between said Southern Realty Investment Company and Mary A. Ham, S. Annie Connor, Haygood and Cutts, and any and all other persons, relative to the purchase of said land by said Southern Realty Investment Company, and the terms, manner and time of payment, the person or persons to whom the purchase price has been or is to be paid, and by whom the same has been or is to be paid, and the person or persons who are to employ or have employed counsel for the recovery of said land and the price to be paid for such service.

7. The cash book or cash books of said Southern Realty Investment Company, showing all money, receipts and disbursements from the time of the organization of said company up to the present time, and particularly the cash book, cash account and entries showing payments of money and receipts of money of said corporation from the time of its organization up to the time of the filing of the above entitled cause, and from the time of the filing of the above entitled cause up to the time of the filing of the plea to the jurisdiction by
movant therein and from said last mentioned time up to the
9 present.

8. All bank books, deposit books, and pass books, showing dates and amounts of deposits of money by said Southern Realty Investment Company in each and all of the banks in which said Southern Investment Company has done business from the time of its organization up to the time of filing the above entitled suit, and from the time of filing the above entitled suit up to the time of the filing of the plea to the jurisdiction therein and from said last mentioned time up to the present. Also all original checks and check stubs and check books showing moneys drawn out or checked out of bank by said Southern Realty Investment Company, from the time of its organization up to the time of the bringing of the aforesaid suit, and from said last mentioned time up to the present.

9. The ledgers, journals and day books showing the business done by said Southern Realty Investment Company from the time of its organization up to the present. The moneys paid in by stockholders, the moneys paid in and arising from other sources, the moneys paid out, the properties purchased by said company, and the monies expended therefor.

10. All original letters and letter press copies of letters received from or written to Philip Lawrence, S. M. Cohen, Glory Cohen, S. Anne Connor and Mary Ham, from the time of the organization of said company up to the 30th day of June, 1905.

And forasmuch as said books and writings contain evidence pertinent to the issues arising under the plea to the jurisdiction in said case, and are such as the said plaintiff ought and may be compelled to produce by the ordinary rules of proceeding in chancery, and under the act of Congress for such cases made and provided, movant prays that the Court may order such production and require the said plaintiff to produce the same, in order that movant, the defendant in the above entitled cause, may introduce the same in evidence in support of movant's plea to the jurisdiction in said cause, the same being and containing material and pertinent evidence on said issue.

And movant will ever pray.

HAL LAWSON,
HALL & WIMBERLY,
Att's for Nancy Walker.

10 To the Southern Realty Investment Company, the above named plaintiff, and to Messrs. Haygood & Cutts, counsel for plaintiff:

Take notice that on Tuesday, June 12, the defendant, Nancy Walker, through her counsel, will present the motion of which the attached is a copy, in the Circuit Court of the United States for the Western Division of the Southern District of Georgia, at Macon, Georgia, at ten o'clock, A. M. in open Court, and move and ask the Court to require the plaintiff the Southern Realty Investment Company, to produce the books and writings in said motion mentioned and described, upon the hearing of said cause on the plea to the jurisdiction as set forth in said motion, agreeably to the provisions of the act of Congress for such cases made and provided.

HAL LAWSON,
HALL & WIMBERLY,
Attorneys for Nancy Walker

Service of the within and foregoing motion and notice is hereby acknowledged.

This 12th day of June A. D. 1906.

HAYGOOD & CUTTS,
Counsel for Southern Realty Investment Company.

Investment: In the Circuit Court of the United States, W. Div. So. Dist. of Ga. #368—Southern Realty Investment Co. *vs.* Nancy Walker. Ejectment. Motion & Notice to Produce under Act of Congress. Filed June 15th, 1906, L. M. Erwin, Deputy Clerk. Hal Lawson, Hall & Wimberly, Defendant's Attorneys.

11 *Answer to Notice to Produce.*

In the United States Circuit Court for the Western Division of the Southern District of Georgia.

SOUTHERN REALTY INVESTMENT COMPANY
v.
NANCY WALKER.

At Law. Ejectment.

GEORGIA, *Irwin County:*

Personally appeared John M. Barentine who on oath says that he is president of Southern Realty Investment Company plaintiff in above stated suit and affiant says by way of response in his behalf to the notice and motion for the production of certain papers and documents served on plaintiff's counsel in above stated case says that he has not in his custody, possession or control any of said papers or documents; that all the papers and documents belonging to said Company, so far as the same are known to this affiant, are in the custody and control of Messrs. Haygood & Cutts, attorneys for said plaintiff, and affiant therefore can make no further response to said notice as to what papers or documents can be produced except to refer to such response as may be made to such notice by said Haygood & Cutts, attorneys for said plaintiff.

J. M. BARENTINE.

Sworn to and subscribed before me This the 11th day of June, 1906.

W. H. ROGERS,
N. P., I. Co., Ga.

12 In the United States Circuit Court for the Western Division of the Southern District of Georgia.

SOUTHERN REALTY INVESTMENT COMPANY
v.
NANCY WALKER.

At Law. Ejectment.

GEORGIA, *Irwin County:*

Personally appeared Rosa L. Ivey, who after being duly sworn deposes and says that she is secretary of Southern Realty Investment Company, and by way of response to the notice and motion received by plaintiff's counsel in above stated case to require the production of certain papers and documents in said case, says that there is no separate stock book of said corporation, the entries as to stock being in the same book as that in which the by-laws and minutes are kept; that said book containing the by-laws and minutes of said corporation is now in the custody of Eldridge Cutts, Esq., a director of said Company; that all other books and papers belonging to said corporation are, so far as known to this affiant, in the possession and custody of Haygood & Cutts, attorneys for said company, and therefore for any further response to said notice, affiant refers to such response as may be made by said Haygood & Cutts, attorneys as aforesaid.

ROSA L. IVEY.

Sworn to and subscribed before me This June 11th, 1906.

W. H. ROGERS,
N. P., I. Co., Ga.

13 In the United States Circuit Court for the Western Division of the Southern District of Georgia.

SOUTHERN REALTY INVESTMENT COMPANY
v.
NANCY WALKER.

GEORGIA, *Irwin County:*

Personally appeared John W. Haygood and Eldridge Cutts who after being duly sworn depose and say that they are the only members of the firm of Haygood & Cutts, Attorneys-at-Law, Fitzgerald, Georgia, and are attorneys for Southern Realty Invesment Company and have been since the time of the formation of said Company acting as attorneys at law, and attorneys in fact for said Company; that affiants have in their possession all the papers of said Southern Realty Investment Company and all documents or books of any kind belonging to said Company; and now by way of response to the motion and notice served upon them as attorneys for said company to require the production of certain books and papers as specified in said notice in the above stated case, affiants say:

1. Affiants have in their possession a certified copy of the charter of said Southern Realty Investment Company which they are ready to produce.

2. Affiants have in their possession the minute book of said Southern Realty Investment Company which is all that they have which is specified in the second paragraph of said notice, and this, they are ready to produce.

3. As to the items called for in the third parapraph of said notice, affiants say that the entries as to stock certificates of said corporation appear in the same book which contains the minutes of said corporation and this they are ready to produce, and this is all that is in the possession of said Company, or of these affiants or either
13½ of them which is specified in paragraph three of said notice; affiants also have and will produce 5 stock certificates which are all that can be found.

4. As to the items specified in paragraph four of this notice, neither said Southern Realty Investment Company nor affiants nor either of them has any such papers as are therein described except a certain original deed made by the heirs of D. H. Pope to J. M. Barentine, and a certain original deed from said J. M. Barentine to Southern Realty Investment Company, and these papers affiants are ready to produce. Affiants also have in their possession the titles from the State of Georgia down to the said D. H. Pope through several conveyances, all of which they are ready to produce if this paragraph is construed to call for such other title papers. Affiants also say that they had in their possession a certain paid draft drawn by John D. Pope for the heirs of D. H. Pope, either on Southern Realty Investment Company or Haygood & Cutts for the sum of two hun-

dred and fifty dollars, and exchanges which they are ready to produce.

5. As to the items called for in paragraph seven, eight nine and ten, neither said company nor affiants as its attorneys have in their possession, custody or control any of the items specified unless the above mentioned minute book be construed as being within the scope of these paragraphs. As to item ten, affiants have certain correspondence between Eldridge Cutts and Philip Lawrence and between affiants as a firm of attorneys representing and in behalf of said Southern Realty Investment Co., and Philip Lawrence; also some correspondence with S. M. Cohen consisting of a copy letter and card, and also copy letter to 4th Nat. Bank Montgomery neither affiants nor said company has any other correspondence on the part of Southern Realty Investment Company and either of said parties; That which affiants have they are ready to produce. Affiants also have certain correspondence with J. D. Pope and his attorney T. R. Perry, which they are ready to produce. To the best of affiants' knowledge and belief they have never had any correspondence whatever with S. Ann Conner and Mary Ham within the dates specified, if ever at all.

14 J. M. HAYGOOD,
ELDRIDGE CUTTS.

Sworn to and subscribed before me, this June 12th, 1906.
W. H. ROGERS,
N. P. I. Co., Ga.

Indorsed: In the Circuit Court of United States. Southern Realty Investment Co. *vs.* Nancy Walker. Affiants of J. M. Barentine Rosa L. Ivey, John W. Haygood and Eldridge Cutts. Haygood & Cutts, Attorneys.

15

Plea to the Jurisdiction.

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

John Doe, on the Demise of Southern Realty Investment Co.,
vs.
Richard Roe, Casual Ejector, and Nancy Walker, Tenant in Possession.

At Law. Action of Ejectment.

Plea to Jurisdiction.

Now comes Nancy Walker real defendant sued by Southern Realty Investment Company the real plaintiff in the action of ejectment above named and says that this Honorable Court is without jurisdiction and ought not to have or take further cognizance of the action aforesaid because—

I.

That the alleged jurisdiction of the court is predicated upon alleged diversity of citizenship, that is to say, upon the claim that there is a controversy between citizens of different states, to-wit: the said Southern Realty Investment Co. plaintiff and this defendant, and upon no other ground and this defendant says that in truth and in fact the said suit is not in reality and in good faith, one in which the controversy is between citizens of different States, but the said case is one in which the parties have been improperly and collusively made for the purpose of creating a case cognizable in the Circuit Court of the United States when in truth and in fact said suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court of the United States for this defendant says the facts are as follows: The said plaintiff the Southern Realty Investment Company an alleged corporation alleged to be a resident of the County of Beadle in
16 the State of South Dakota and a citizen of said State of South
Dakota in truth and in fact instituted and is prosecuting this suit in the Circuit Court of the United States for the use and benefit of the heirs at law of D. H. Pope, to-wit: John D. Pope and others whose names are to this defendant unknown and for the use and benefit of John W. Haygood and Eldridge Cutts citizens and inhabitants of the State of Georgia whom this defendant avers to be the real and substantial plaintiffs in this suit and this suit is brought and prosecuted in their behalf for the purpose of conferring an apparent jurisdiction upon this court. This defendant says that said Southern Realty Investment Company was incorporated and organized for the purpose and with the intent of instituting and prosecuting suits in the United States Court which do not really and substantially involve a dispute or controversy within the jurisdiction of the United States Court and that the business of the said Southern Realty Investment Company contemplated from the time of its inception and organization and carried on by it is the business of bringing and prosecuting, instituting and carrying on suits for the recovery of lands and mesne profits in the Courts of the United States, of which the said courts of the United States do not properly have cognizance and the business of bringing said suits is the real and practically the only business carried on by it.

This defendant says that said alleged corporation is in reality composed of John W. Haygood and Eldridge Cutts Attorneys-at-law at Fitzgerald, Georgia, largely engaged in the bringing of suits at law for the recovery of lands and mesne profits and suits in equity for the recovery of lands, timber, rents, issues and profits and injunction and other equitable remedies appropriate thereto; the bringing of suits for land constituting a greater part of their business; that for the purpose of conferring upon the courts of the United States jurisdiction of land suits in which the real and substantial plaintiffs are citizens of the same state with the defendants, the said Jno. W. Haygood and Eldridge Cutts, in their own name

17 and in the name of the alleged corporators which they joined with their own for the purpose, to-wit: Jno. M. Barentine, Thomas M. Parsons, Philip Lawrence and Marion Hoke, filed articles of incorporation in December 1904 for the purpose of being incorporated under the laws of the state of South Dakota under the name of Southern Realty Investment Company, the said Philip Lawrence being the Attorney employed by them to secure the said charter of said corporation and said Marion Hoke bring his stenographer for the purpose of securing contracts from persons desiring their services as Attorneys-at-Law in the bringing and prosecuting suits in the courts of the United States and of conferring jurisdiction upon said courts which does not properly exist. That the said heirs at law of D. H. Pope to-wit, Jno. D. Pope and others whose names are unknown to this defendant, employed the said John W. Haygood and Eldridge Cutts to bring the aforesaid suit against this defendant under a contract nominally and ostensibly with the said Southern Realty Investment Company, which contract this defendant has not seen but the purpose and effect of which is to invest in the said Jno. W. Haygood and Eldridge Cutts, operating in the name of the Southern Realty Investment Company, a share of the recovery in consideration of their services as Attorneys and in consideration of their paying the costs of court and the expenses of the litigation and that the transfer by the said heirs at law of the said D. H. Pope, to-wit John D. Pope and others whose names are unknown to this defendant of their alleged title and claim for the land sued for to the said Southern Realty Investment Company was made as a part of said arrangement and with the view and for the purpose of instituting and prosecuting this suit in the United States Circuit Court and of conferring an apparent jurisdiction on this court of a controversy not properly cognizable therein, all of which the said defendant is ready to verify.

Wherefore this defendant says that the said transaction constitutes a scheme and device to give jurisdiction to the Circuit Court of the United States of a cause of which said court has not properly jurisdiction, and constitutes a fraud upon the court and a wrong against this defendant, and which the said defendant is ready to verify.

18 Wherefore this defendant prays judgment whether this court can or should or will take further cognizance of the action aforesaid, and prays that this Honorable Court dismiss the said suit by reason of the fact that said suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said court, and also for the reason that the parties to said suit have been improperly and collusively made for the purpose of creating a case cognizable in said court.

Wherefore the defendant prays that judgment of the court whether this court can or will take further cognizance of the action aforesaid.

And this defendant says that by reason of the facts set forth in the foregoing pleas to the jurisdiction, this Honorable Court is without jurisdiction in the premises, and that the Courts of the

State of Georgia only have jurisdiction in the premises, and in particular that the Superior Court of Wilcox County, Georgia, is the proper court to have and take jurisdiction in the premises.

NANCY WALKER, *Defendant.*
HALL & WIMBERLY,
HAL LAWSON,
Attorneys for Defendant.

Witness:
WRIGHT MIXON.

19 United States of America,
State of Georgia, County of Wilcox:

Nancy Walker, the above named defendant, in her own proper person, comes and makes oath and says that the foregoing plea hereunto annexed is true and in point of fact, and is not interposed for delay. NANCY WALKER.

Sworn to and subscribed before me this the 14 day of June, A. D. 1905. WRIGHT MIXON,
Notary Public, Wilcox County.

We do certify that the foregoing plea is, in our opinion, well founded in point of law.

This the 16th day of June, A. D. 1905.

HAL LAWSON,
HALL & WIMBERLY,
Defendant's Attorneys.

Indorsement: #368. In the Circuit Court of the United States for the Western Division of the Southern District of Georgia. John Doe on the demise of the Southern Realty Investment Company *vs.* Richard Roe casual ejector and Nancy Walker, tenant in possession. At Law—Action of Ejectment. Plea to the jurisdiction. Filed Jan'y 16, 1905. Cecil Morgan, Deputy Clerk. Hal Lawson and Hall & Wimberly, Defendant's Attorneys.

20 *Amendment to Petition & Order Allowing.*

In the United States Circuit Court for the Western Division of the Southern District of Georgia.

John Doe, on the Demise of Southern Realty Investment Company,
v.
Nancy Walker.

At Law. Ejectment.

And now, by leave of the court first obtained, comes the plaintiff in above stated case and amends his petition therein by alleging as follows:—

That the lessor of plaintiff and real plaintiff herein, Southern Realty Investment Company, is a corporation duly created organized and existing under the laws of the State of South Dakota, and a citizen of said state of South Dakota.

KING, SPALDING & LITTLE,
HAYGOOD & CUTTS,
Plaintiff's Attorneys.

The foregoing amendment is allowed and ordered filed. In open court, this June 22nd, 1906.

EMORY SPEER, *Judge.*

Filed June 22, 1906.
CECIL MORGAN,
Deputy Clerk.

Indorsement: No. 368. In the U. S. Circuit Court of West Div. So. Dist. Ga. Southern Realty Investment Co. *vs.* Nancy Walker. Amendment to Petition and order thereon. Filed June 22, 1906. Cecil Morgan, Deputy Clerk. Haygood & Cutts, Attorneys.

21 *Verdict.*

SOUTHERN REALTY INVESTMENT COMPANY
vs.
NANCY WALKER.

Ejectment.

We the Jury find for the plea and the Court without jurisdiction.

CHAS. P. BANNON, *Foreman.*

Filed June 23, 1906.
L. M. ERWIN,
Deputy Clerk.

22 *Bill of Exceptions.*

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

SOUTHERN REALTY INVESTMENT COMPANY
vs.
NANCY WALKER.

Suit in Ejectment.

Be it remembered, That on the 22nd day of June, 1906, during the May Term 1906 of the United States Circuit Court for the Western Division of the Southern District of Georgia there came on to be tried in said Court before the Honorable Emory Speer, one of the Judges of said Circuit Court then and there presiding, the case of John Doe on the demise of the Southern Realty Investment

Company, *vs.* Richard Roe, casual ejector, and Nancy Walker tenant in possession, the said cause being then and there tried solely and alone upon a plea to the jurisdiction of said Court filed by the Defendant in said cause, and the said trial being had alone upon the issue raised by said plea to the jurisdiction. A jury having been empanelled, the defendant upon the issue formed by the plea to the jurisdiction assumed the burden of proof and offered the following evidence:

23 Defendant offered in evidence Articles of Incorporation of the Southern Realty Investment Company as follows, to-wit:

STATE OF SOUTH DAKOTA,

DEPARTMENT OF STATE.

State of South Dakota

Under God The People Rule

Great (1889) Seal.

UNITED STATES OF AMERICA, *State of South Dakota:*

SECRETARY'S OFFICE.

I, O. C. Berg, Secretary of the State of South Dakota, and keeper of the Great Seal thereof, do hereby certify that the attached instrument of writing is a true and correct copy of Articles of Incorporation of the Southern Realty Investment Company and of the whole thereof and has been compared with the original now on file in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota; done at the City of Pierre this 5th day of December 1904.

O. C. BERG,
Secretary of State,
By E. N. GRAVES,
[SEAL.] *Assistant Secretary of State.*

24 *Certified Copy of Articles of Incorporation of Southern Realty Investment Company.*

Know all men by these presents:

That we the undersigned: John W. Haygood, Eldridge Cutts, John M. Barentine and T. M. Parsons, Philip Lawrence and Marian Hoke, for ourselves, our associates and successors, have associated ourselves together for the purpose of forming a corporation under and by virtue of the statutes and laws of the State of South Dakota, and we do hereby certify and declare as follows, viz:

First.

The name of the Corporation shall be Southern Realty Investment Company.

Second.

The purpose for which this Corporation is formed is to buy and sell real estate or lease the same; to open up farm lands and operate farms; to do and carry on any business which may be deemed advantageous in connection with farming operations; to borrow and lend money on such security as may be deemed advisable; to make and furnish abstracts of title to lands; to guaranty titles of lands; to buy, sell, or discount notes, accounts, mortgages, bonds, judgments, executions and commercial paper of any kind; to issue bonds and secure the same by mortgage or conveyance of property, real or personal, and to sell, pledge or hypothecate such bonds; to derive compensation and profit from such transactions and generally to do any and everything needful to the carrying on of such business transactions.

25

Third.

The place where the principal business of this corporation shall be transacted i*n* Huron, in the County of Beadle, State of South Dakota, but a business office may be located at Fitzgerald, Irwin County, Ga., where meetings of the Directors and Stockholders may be had for the transaction of business.

Fourth.

The term for which this corporation shall exist shall be twenty (20) years.

Fifth.

The number of Directors of this Corporation shall be Three and the names and residences of such who are to serve until the election of their successors are as follows:

Names.	Residences.
John W. Haygood	Fitzgerald, Ga.
Eldridge Cutts	Fitzgerald, Ga.
Philip Lawrence	Huron, S. D.

Sixth.

The amount of the Capital Stock of this Corporation shall be and is Five Thousand Dollars divided into Fifty shares of the par value of One Hundred Dollars each, fully paid and non-assess*a*ble.

26

Seventh.

No stockholder shall be liable for the debts of the corporation in any amount greater than his unpaid subscription.

In Testimony Whereof, We have hereunto set our hands this 28th day of November, 1904.

ELDRIDGE CUTTS.
PHILIP LAWRENCE.
J. M. BARENTINE.
J. M. PARSONS.
J. W. HAYGOOD.
MARIAN HOKE.

STATE OF GEORGIA, *County of Irwin, ss:*

Be It Remembered, That on the 28th day of November A. D. 1904 before the undersigned, personally appeared the above named John W. Haygood, Eldridge Cutts, John M. Barentine and T. M. Parsons, well and personally known to me to be the same persons described in and who executed the foregoing instrument and severally duly acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at said County, the day and year last above written.

[SEAL.]
DREW W. PAULK,
Notary Public.

27 STATE OF SOUTH DAKOTA, *County of Beadle, ss:*

Be it remembered, that on this 3rd day of December A. D. 1904 before the undersigned, personally appeared the above named Philip Lawrence and Marian Hoke well and personally known to me to be the same persons described in and who executed the foregoing instrument and severally duly acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at said County the day and year last above written.

CHARLES E. BRYANT,
Notary Public.

STATE OF GEORGIA, *County of Irwin, ss:*

John W. Haygood and Eldridge Cutts being duly sworn, each for himself deposes and says: That he is one of the persons described in and who signed the foregoing Articles of Incorporation as an incorporators herein; that he has read said Articles and knows the contents thereof; that the incorporators intend in good faith to form a corporation for the purpose of the promotion of a lawful business, as set forth in said articles, and not for the purpose of enabling any corporation or corporations to avoid the provisions of Sections 770 to 781, inclusive, of the Revised Penal Code of 1903, of the State of South Dakota, relating to unlawful trusts and combinations, and laws amendatory thereto.

J. W. HAYGOOD.
ELDRIDGE CUTTS.

Subscribed and sworn to before me this 28th day of November, A. D. 1904.

[SEAL.]

DREW PAULK,
Notary Public.

28 STATE OF SOUTH DAKOTA:

STATE OF SOUTH DAKOTA.

Great (MDCCCIXXXIC) Seal.

DEPARTMENT OF STATE.

Whereas John W. Haygood, John M. Barentine, Philip Lawrence and others, have filed in this office a certificate of declaration in writing as provided by law, setting forth all the facts required to be stated, and have in all respects complied with the requirements of the law governing the formation of private corporations as contained in the Statutes of this State.

Now therefore, I, O. C. Berg, secretary of State of the State of South Dakota, in virtue and by authority of law, do hereby certify that said parties, their associates and successors have become a body politic and corporate, under the corporate name of Southern Realty Investment Company and by said name have a right to sue and be sued, purchase, hold and convey real and personal property, and to have an- enjoy all the rights and privileges granted to a private corporation under the laws of this State, subject to their Article- of Incorporation, and all legal restrictions and liabilities in relation thereto.

In testimony whereof I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, done at the City of Pierre this 5th day of December A. D. 1904.

[SEAL.]

O. C. BERG,
Secretary of State,
By E. N. GRAVES,
Ass't Secretary of State.

29 Defendant offered in evidence stock certificates issued by the Defendant Company, as follows:

No. 3. One Share.

Southern Realty Investment Company.

Incorporated under the Laws of South Dakota.

Principal Office, Huron, S. D. Business Office, Fitzgerald, Ga.

This certifies:

That J. M. Barentine is the owner of One share of the Capital stock of this corporation, fully paid and non-assessable. Transfers of this certificate will not be recognized until day entered on the books of the corporation.

In witness whereof said corporation has caused its corporate seal to be hereto affixed and these presents to be signed by its President and Secretary. This 7th day of January 1905.

J. M. BARENTINE, *Pres't.*

Attest:
[SEAL.]

ROSE L. IVEY, *Sec'ty.*
ELDRIDGE CUTTS,
Acting Sec.

Also certificate No. 4 for one share issued to R. L. Ivey.

Certificate No. 6 for one share issued to T. M. Parsons. Said certificates being dated January 7th 1905 and being similar to certificate No. 3.

Certificate No. 7 for 22 shares issued to John W. Haygood dated June 8th 1905.

Certificate No. 8 issued to Eldridge Cutts for 23 shares dated June 8th 1905.

Said last two certificates being substantially similar in form to certificate No. 3 copied above.

30 Defendant also offered in evidence transcript of the stock record of the Southern Realty Investment Company, which is as follows:

Stock Record of Southern Realty Investment Company.

No. of certificates.	No. of shares.	To whom issued.	Date of transfer or issue.	Entries of cancellation of certificates.
1	14	J. W. Haygood....	Jan. 7, 1905	Surrendered, canceled, certificate No. 7, issued instead.
2	14	Eldridge Cutts.....	Jan. 7, '05	Surrendered, canceled, certificate No. 8 issued instead.
3	1	J. M. Barentine ...	Jan. 7, '05	
4	1	R. L. Ivy	Jan. 7, '05	
5	1	Philip Lawrence....	Jan. 7, '05	Canceled on acc't resignation Philip Lawrence.
6	1	Marian Hoke......	Jan. 7, '05	Canceled on acc't resignation Philip Lawrence.
7	22	J. W. Haygood....	June 8, '05	
8	23	Eldridge Cutts.....	June 8, '05	
9	1	Philip Lawrence...	June 8, '05	
10	1	Marion Hoke......	June 8, '05	
	1	T. M. Parsons.....	Jan. 7, '05	

Defendant offered in evidence the following deed from Mrs. D. H. Pope, John D. Pope and others, heirs at law of D. H. Pope, deceased, to John M. Barentine, and also deed from John M. Barentine to Southern Realty Investment Company:

31 STATE OF GEORGIA, *Dougherty County:*

This Indenture made this 13th day of February, 1905, between Mrs. D. H. Pope, John D. Pope, Ella Pope Crosland, W. D. Pope, Mary J. Pope, R. L. Pope and Davie Pope of said County and W. H. Pope of Worth County, Ga. parties of the first part (the said parties of the first part being the only heirs of D. H. Pope, deceased, late of Dougherty County, Georgia) and John M. Barrentine of Irwin County, party of the second part, Witnesseth: That the said parties of the first part for and in consideration of the sum of Two Hundred and Fifty Dollars to them in hand paid, have this day bargained, sold and conveyed, and do hereby bargain, sell and convey unto the said John M. Barentine, party of the second part, his heirs and assigns, all that certain tract of land lying and being in the 3rd District of originally Irwin, now Wilcox County, and known and distinguished in the plan of said District and County as lot Number Two Hundred and Seven (207).

To have and to hold the said described land unto the said party of the second part, his heirs and assigns in fee simple forever.

And the said parties of the first part the title to the said premises unto the said party of the second part will forever warrant and defend as against all persons claiming under them, the said parties of the first part.

In witness whereof, the said parties of the first part have hereunto set their hands and affixed their seals the day and year first above written.

MRS. D. H. POPE. [L. S.]
JOHN D. POPE. [L. S.]
MARY J. POPE. [L. S.]
WALTER D. POPE. [L. S.]
R. L. POPE. [L. S.]
ELLA POPE CROSLAND. [L. S.]
DAVIE POPE. [L. S.]
W. H. POPE. [L. S.]

Signed, sealed and delivered in the presence of — in Dougherty County as to all except W. H. Pope
P. L. HILSMAN, JR.
EDWIN STERNE,
N. P., D. C., Ga.

In Worth County:
THYAL HOLTON,
J. W. WARREN,
Clerk S. C. Worth Co., Ga., as to
Signature of W. H. Pope.

32 STATE OF GEORGIA, *Irwin County:*

In consideration of the sum of two thousand dollars to me paid, I, John M. Barentine, of the County of Irwin and State of Georgia do hereby sell and convey unto Southern Realty Investment Company, a corporation, of the County of Beadle and State of South Dakota, its successors and assigns, a tract or parcel of land which is described as follows:

Lot of land No. Two Hundred and Seven (207) in the Third (3rd) District of originally Irwin, now Wilcox County, Georgia, containing four hundred and ninety acres, more or less, together with all the rights, members and appurtenances thereunto belonging, in fee simple forever.

To have and to hold said lands and its appurtenances, unto said Southern Realty Investment Company, its successors and assigns, in Fee Simple.

I warrant the title to said land against the lawful claims of all persons holding under me.

In witness whereof I have hereunto set my hand and affixed my seal, this the 11th day of March, 1905.

J. M. BARENTINE. [SEAL.]

Signed, sealed and delivered in presence of
THOS. BERRY.
G. W. HARRINGTON,
N. P., Irwin Co., Ga.

Recorded Clerk's office Supr. Ct. Wilcox Co. Book "Q" June 9, 1906.

W. J. HANCOCK, *Clerk.*

33 Defendant next offered in evidence testimony of JOHN M. BARENTINE taken by deposition, which is substantially as follows:

I reside in Fitzgerald. My name is J. M. Barentine. I am the President of the Southern Realty Investment Company. I don't know how long I have been President, Col. Cutts and Col. Haygood can answer this. After the Company had a few meetings and I understood it I don't know how long it was then. The books will show I was President as far back as April 14th, 1905, because I did not understand the nature of the corporation for some little time after it was organized and we had little trouble over at Irwinville and I came up to the office and rehearsed it and I realized that I was an officer and I think I was elected President before that time and they were asking me for some affidavits. Before that Col. Ryman got an affidavit from me concerning my being President.

I haven't any recollection of the time Col. Haygood and Cutts got up this organization and wanted us to take stock in it—I mean Mr. Parsons and myself and others; also Miss Rosa Ivey. The stockholders, as far as I know, are Mr. Parsons myself Haygood & Cutts and Miss Rosa Ivey. I signed stock for all of them. I don't know of any others. I hold $100.00 of stock. I think I signed stock for $100.00 for Parsons. I don't remember how much Miss Rosa Ivey Holds. I saw Mr. Parsons' stock is the reason I remember it. Miss Rosa Ivey is a lady Stenographer in Haygood & Cutts office. The hundred dollar stock was donated to me and it was understanding

between us. I turned over the certificate to Mr. Cutts to carry to
Macon court. The certificates will answer for themselves
34 as to when it was issued to me. It was first in my possession
the time it bears date. It was left here in the office. It
never has been out of the office of Haygood & Cutts until we turned it over to Cutts to carry to Macon. I don't remember ever carrying it out of the office. Haygood & Cutts were the lawyers of the Southern Mercantile & Building Company and the agreement was that they were to donate the stock. I don't know of any money paid in—the books show how the stock was paid in. I have seen the books. The Company has a minute book. I don't know of any other books—I don't know of any cash book. As President I have no knowledge of any cash—I never knew of the Company ever having any money. I have no bank account for the Company.

I don't know who is Treasurer. I don't look after it at all except to sign such papers as are presented to me. Col. Cutts presents them to me. I have no knowledge of the Company except the papers are presented to me by Col. Cutts. When I sign papers, I don't ascertain about where the money goes. When I buy property I have no knowledge of where the money comes from to pay for it. I could not say just now who are the Directors of the Company. I do not know any of them. I have attended meetings, I don't know whether you would call it directors' meeting. Myself, Col. Cutts and Haygood and Mr. Parsons are the directors. Miss Rosa Ivey is the Secretary of the Company.

As President, I never have sold or purchased any lands. As President, I have knowledge of the purchase or sale of lands. I sign the deeds. Haygood & Cutts looks after the matter in every particular for the Company. I have no knowledge of what trades
were made for lands until they come before me as President
35 of the concern. When they do come before me, I have per-
sonal knowledge of them. I remember at that time but I
don't remember all the parties and transactions. We have the papers with my name as President. I have here, stock, deeds, &c., signed by the President. I had a deed to lot No. 207 in the third district of originally Irwin now Wilcox County containing 490 acres made to me personally. I got deed from the former owner. The deed was made to me and I then made a deed to the firm. As to how I came to take a deed to the land, I think the deal was left to the lawyers. When it was deeded by me I did not receive anything—no part of the two thousand dollars as recited in the deed made by me to the company was paid to me. Mr. Cutts read the deed over to me. I had no agreement that the company was to pay me two thousand dollars for it. At the time the deed was taken to me I had no claim in it—no more than one stockholder of the company. I signed the deed because Messrs. Haygood & Cutts brought it to me. I made it to this company. I never paid anything personally for this land—I never signed any paper to pay for it personally. I have no knowledge of my own as to whether the parties who made the deed were ever paid any money—if they were ever paid any I don't know of it. As to the understanding the heirs

of Pope had as to what they were to be paid for the land and as to when it was to be paid they had that with our lawyers—I have no knowledge of that myself. I was President of the company at that time. I had knowledge of what the trade was. I did not say that the company has never had any money—I said if they had any I didn't know it—I have never seen any. I don't know what if any understanding exists between the Southern Realty
Investment Company and the heirs at law of D. H. Pope as
36 to what D. H. Pope's heirs are to be paid. I never made the
deal with the Pope heirs. I don't remember as to any other lands the company has in this county. I can't say now as to their owning any lands in this county. I don't know anything in the world about the Gelders or Cohen land being in suit in the United States Court except in a round about way. I do not know of my own knowledge.

The company has had no other President besides me since the organization. I don't remember about the terms of the purchase of the lands in this county by the company—I don't remember about that. I don't remember if the company paid anything for that land—if they have paid anything I don't know it. I don't remember what other lands the company has outside of the tract in this county that I have just asked you about. I don't look after this business at all—I have got other business to look after and you can find out more from Haygood & Cutts than you can from me. I don't look after it at all only when we call meetings. Col. Cutts & Haygood call the meetings—that is, they tell us to come up and we have meetings. We have had three or four meetings. I think Col. Cutts and Miss Rosa Ivey writes up the minutes. Any papers that are necessary for me to sign they get them up and explain them to me and I sign them as President. The place of business of the Southern Realty Investment Company is in Haygood & Cutts' office, where we have been meeting at. They have never had any meetings anywhere else. They have no other place where their sign is at indicating their place of business. I don't remember seeing any stationery. I couldn't say that I had ever seen anything in the way of books, papers, office furnishings, or personal things of any sort except those books, etc., I spoke of. I don't know of any personal property. I remember seeing the minute book. I don't remember
seeing any other.
37 I think the attorneys are in a position to introduce them.
Miss Rosa Ivey is our Secretary. Haygood & Cutts keeps the deeds of the company. I don't think anything like the employment of lawyers where the company has anything like litigation in courts has come up. I don't know how we would arange about that. We have been called over to Macon and to Irwinville about suits is all I know anything about suits. I don't remember if I was subpœnaed there at the instance of the defendant. I went by Col. Ryman, he told me about it and I went sorter along on his instructions. That suit in Macon is all that I know of that the company has pending at this time in any courts. I don't know that this piece of property that this company owns in this cou-ty is in

litigation. As President of the company I have heard of it but can not swear to it. As President, I do not know of any lawsuit except the one in Macon. There was one in Irwin but I don't know about it. After I went there and came back I never inquired about it any more. I think that was a criminal prosecution of a man named Cohen.

I came to take stock in this company because Haygood & Cutts were Attorneys for the Southern Mercantile & Building Co. and they wanted us to take stock in the company and I took stock at their request. They wanted to form a company and we went into it and I necer made inquiry until the suits were brought but I have wanted to understand the nature of it and I think I understand it better now. I do not know when was the first time that I knew that I was President. When I made that affidavit I told Mr. Ryman that they considered me as President of that company but I did not understand the particulars. Col. Ryman remembers my telling him that they
considered me as President of the company at that time. I
38 never made any inquiries into it at that time, but I have since.

Of my own knowledge I do not know whether the company claims any land at all except simply to bring these suits for Haygood & Cutts—I do not know about that, I could not say they do. When they bring me papers to sign I sign them after investigating them. I took stock at request of them because they were attorneys for me in other matters. I never directed them to bring suit as President. I did not as President have knowledge of what suits they were bringing—not until they were brought. As to the terms of the employment of Haygood & Cutts by the Southern Realty Investment Company in these suits, and as to the fees we are paying them or what interest they have in the suits we have never had any understanding at all. I was never present at any meeting where they were directed to bring suits and their compensation fixed. All the lands were originally bought by Haygood & Cutts and then they brought me the papers to sign. I don't know what understanding they had with the persons they traded with. I don't know what the persons are to get out of it or what Mess. Haygood & Cutts are to get out of it. Mess. Haygood & Cutts are attorneys at law and have their office here at Fitzgerald. They are engaged extensively in bringing land suits. This one at Macon is the only land suit they are in that I have knowledge of except the little matter at Irwinville. The only thing that I know about this company is that they asked me to take the President's office, and to accommodate them I did. I don't remember what they told me at the time they asked me to take stock. Nothing was said about their wanting this company to bring suits instead of the party owning the property. They told me that they wanted to form a company like this and wanted me to be President and have
some stockholders and they never mentioned suits. I never
39 knew about the suits until they were brought. I was not con-
sulted about the bringing of any of these suits. I was not asked about the purchase of the lands from Mrs Cohen and have no knowledge of that. I was not consulted as to the purchase of the lands from S. Anne Conner and Mary Ham. I don't know

who makes the tax returns of the company. I think our attorneys look after that, in other words, I believe they did. I left the matter entirely with them. I sign what papers they bring to me. I can't say what lands the company claim to own in Wilcox County. As to whether the Company claims any lands except the lands in suit, my understanding is that we went to Macon on account of suit for land in Wilcox County. I could not say of my own personal knowledge if the company claims any lands outside of what is being sued for. I suppose we went to Macon as witness- on some lands in Wilcox County. It occurs to me that they own some in Berrien County—I don't remember about that. I don't know whether they are in litigation or not.

Their office (Haygood & Cutts') is known as our place of business. I consider Haygood & Cutts business managers. I don't remember, I can't say what office they hold. The business of the company is really done through its attorneys. The company has done no business except through its attorneys. We just organized the company, as I told you while ago, and they just looked after it. The President got stock donated to him. Something was said about that in connection with salary—hundred dollar share of stock.

I have had many a conversation with Mr. J. B. Hall of Abbeville over there. During a conversation over at Abbeville shortly after the filing of this present suit of Southern Realty Investment Company against Nancy Walker Mr. Hall intimated that this company was organized for the purpose of bringing suits in the United States Court, and I told him it might have been. I don't know where the conversation occurred, it might have been at Fitzgerald. He wanted to insinuate that the organization was formed for rascality. To tell you the truth I sorter got ashed up a little and the conversation was dropped and I don't remember what was said. I don't know for what purpose the company was really organized. I don't know that it has ever done any business except as to the bringing of these suits. During the time that I have been President the company has not done any business in South Dakota that I know of. It had no office there. I don't know that there are any stockholders there. So far as I as President am concerned I have never known of any business in South Dakota. I have never known the company to have any place of business except in the law office of Haygood & Cutts at Fitzgerald. I never wrote a letter for the company nor received any for the company. I might have seen some letter written to Mr. Cutts that he has called my attention to, but I don't remember what they are.

Cross-examination:

I agreed to act as director and President of the company at the request of Haygood & Cutts. That was the consideration for the issuing of the share of stock to me—there was something said about it. I don't know when the first meeting was held at which the company was organized here in your office. I don't remember the exact time. I do remember when we first had meeting for the pur-

pose of organization. I, Mr. Parsons, Judge Haygoods, Miss
41 Ivey and Mr. Cutts were present. I think that time we elected
directors. I know we elected officers, and, of course, directors came in under that. I remember that Mr. Parsons, Judge Haygood, Miss Ivey and Mr. Cutts were elected directors. I remember the fact that certain land was put into the company which the company accepted in payment of stock, but I don't remember what land it was. I remember the matter being brought before the stockholders' meeting of accepting certain lands and issuing stock on it. I don't know whether we issued stock that day or not, but it was put in, but I don't remember any money being accepted. As to putting in, I remember Mr. Parson going out there but I could not swear that it was put in. I know you put in the land all right but I don't remember exactly about it. I have seen these matters recorded on the minutes and have heard them read. I know that is one of the lots because you and Mr. Cutts and Mr. Parsons went out and looked at the lot. I remember Mr. Parsons or I were to go with you and look over the lot. And when the party got ready to go it was not convenient for me to go and Mr. Parsons went. I remember you put in a Colony Subdivision of 20 acres tract all right but I don't know the land. I know that those are recorded on the minutes. I was present at the directors' meeting when Haygood & Cutts were designated to act as attorneys for the company and were also authorized to sell and buy lands for the company. I don't remember exactly being present at the meeting when it was resolved that the attorneys should bring any suit that they might see fit. I remember the resolution, don't you. In other words it was left to Haygood &
Cutts to bring whatever suit they thought necessary. I said
42 something about making full inquiry about the company
after going to Irwinville at the time the Cohen case was up there. It had been explained to me before going about this company. It was explained at the original commencement of the company that it was for the purpose of making investments in land. And the further inspection I made after that case was on account of some things being said in regard to the company not being organized for anything good. Then I made further inquiry on account of the charges which has been made. Statements had been made on the outside and I knew that I did not belong to the kind of organization people on the outside said it was. I remember on the books something said about every meeting. I undersood things at the time the minutes were read but I did not charge my memory with them. I remember at the time it was done but I never tried to keep it in my mind. Mr. Gelder, Mr. Ryman and Mr. Hall told me that it was a swindle. I never told Mr. Hall that this company was formed for the purpose of filing suits in the United States Court. My understanding was that this was a corporation organized for the purpose of dealing in real estate. I thought it was not for the purpose of defrauding or cheating anybody and when this thing come up and the people were talking I wanted to find out further about it. I wanted to find out that it wasn't for the purpose of defrauding anybody. These details *which* I may not be familiar with or kept

distinctly in my memory, that is, because of the fact that the company authorized Haygood & Cutts to attend to it. I did not aim to look after nothing and I thought they were to attend to it.

43 Redirect examination:

This lot 218, I don't call the Williams lot. I call it the Studstill lot. The company has it I think.. It is a wild lot. I know that Haygood & Cutts put it into the company. I don't know of any one else claiming it. I don't know that there are people claiming adverse to the company under whom the timber was cut by Garbutt Lumber Company. I don't know that the title under which timber was cut was adverse to the title held by Haygood & Cutts. I do not know that Strickland cut under an adverse title, and the people that turpentined it claimed under Bullock, Bush & Co. I don't know the reason why when Haygood & Cutts asked me to go into the company I asked them if it was honest and honorable. I hav-n't got any confidence in lawyers either—that's the reason I asked if it was honest and all right because it was lawyers. When I gave them full power to bring any suits they pleased or buy any property they pleased, to make any deal, they were still lawyers. They had already told me it was honorable. I didn't know what suits they expected to bring. I lost a little time in pay for the stock I was willing for them to manage like they pleased. We had elected them for that business. I lost time besides the time going to Macon. I didn't figure on being a witness at the time it was organized. I don't know that all suits have been brought under this power given them to bring suits have been brought in the United States Court. I don't know that this suit brought in Irwin County was a criminal prosecution. They told me that it was a legal organization and I
44 never asked them where they got the charter or anything
about it. I think they told me at the time I went into it that it was a South Dakota organization. They did not tell me why the organization was chartered in South Dakota. I don't know why they didn't get the charter in Georgia, or why they got the charter in South Dakota. I said I paid very little attention to it, very little. I went over the minutes but I couldn't call it out. Our meetings sometimes lasted two or three hours. During that time we were talking business. I don't remember what business we were talking about. We did not talk about these suits in the United States Court. I hav-n't thought much about what we talked about—I don't remember. It was not reported at any of these meetings that any suits were brought in the United States Courts—nothing was said about suits being brought for the purpose of holding some of the property. I don't remember whether since the organization of this company Haygood & Cutts ever bought any property which they did not straightway bring suit for in the United States Court. I thought the company had property to buy property with. Well I don't say now that they have any. I knew that the company had no money *yo* pay for the Barentine land, two thousand dollars. I don't know where I thought that the two thousand dollars to pay for the land went—Mr. Barentine did not get it. I think I have a

right to acknowledge receipt of money which I did not get. I signed a paper last Saturday acknowledging receipt of some money and didn't get a cent. I think it was right.

I do not remember how it was about the Pope land transaction. I remember the deed but I don't remember the two thousand dollars. I think Col. Cutts explained it to me. What ever it was was satisfactory to me. As to a corporation like mine down
45 stairs, that is recognized as carrying on business. Sometimes money is pretty scarce—we keep our money in bank. Sometimes we get more out of bank than we have got—sometimes when we buy we pay for it. When I get a piece of land and recite that I pay $2000 and don't pay a cent I expect to pay. I didn't think anything strange to make this deed to the company for $2000 and not get it.

I think I have seen the lot No. 207, the Walker lot. I suppose that land is worth about two or three dollars an acre. At any time since this charter was granted to Southern Realty Investment Company since December 1904 I would have given more than $200 for that land. I think it was worth something like two dollars an acre in the early part of 1905. I think it was worth as much to Pope's heirs as when I deeded it to the company. As to whether when I was present at these meetings I presided and called the meetings to order the minutes will show. I don't remember exactly how we called our meetings to order now. I don't remember if there was any reference to anything in any of these meetings as to the bringing of these suits in the United States Court. I don't remember if the lawyers report that they were bringing suits or buying lands that had to be sued for. As to the selling and buying *and* land or paying any lawyers, when we organized we understood that Haygood & Cutts would attend to that, and whatever they did we would ratify—I think that was my understanding. The general understanding at the time we organized and at the time I agreed to go into it, is that whatever they did for the company and in the name of the company was all right.

Recross examination:

I always take deeds with the amount of consideration stated in the deed more than is really received or given. I would not
46 buy a piece of property from a man unless he would make the price larger than the amount paid. It is very common in this country. I know this particular lot No. 207 that Mrs. Nancy Walker is on. It is worth $3.00 an acre—I have been over it. I have some land up there that I wouldn't take $10.00 an*d* acre for, but mine has some corn and cotton on it. Five dollars would have been more than I would have paid for it. I sold some right close to it for $10.00 an acre. Those people right around there ask $20.00 an acre for theirs. I think you could get $5.00 per acre. When I give in land I give it in just like it would bring put up for sale. It would bring more than that if allowed to be paid for in several payments. Leaving out what I would give for it and judging from the value of the lands around it and what lands around it have been sold

for, I will state that about fourteen months ago this lot of land would have been eight or ten dollars an acre. If it had been put up at forced sale it would not have brought that much.

Defendant next offered in evidence deposition of T. M. PARSONS which is substantially as follows:

I live at Fitzgerald, Ga. I just hold one share of stock of the Southern Realty Investment Company. I did not pay anything for that stock. I didn't agree to pay anything. That share is in Mr. Cutts' possession. It was in my hands until I turned it over to him this morning. I have kept it meanwhile in the real estate office of the company. It has been actually in custody of the secretary and treasurer. It was donated to me—it was paid up stock. Messrs. Haygood & Cutts approached me to accept position as stockholder in this company. I think I am a director in the company. I hav-n't
attended but two meetings as director, one when we organized
47 and one since. I don't remember exactly whether they were
directors' meetings or stockholders' meetings. The company was organized just like any other company I believe. The minutes have never been read over to me nor do I know what the minutes contained. I remember being in another meeting but I don't remember what was done. I signed the affidavit, a copy of which is attached to these depositions marked Exhibit A. It is correct. At the time this stock was donated to me the explanation was made as to why they wanted me to come into the company, according to my recollection was that they wanted me to go into the corporation so they could do business. I did not know about the corporation at that time. I did not know that it was a South Dakota corporation at that time nor that they had a charter from South Dakota, and that they could sue in the U. S. Court. Well, I think we all went over to Irwinville and I found it out there. I think Mr. Ryman gave me the subpœna under which I attended there. I do not remember about when that was. I was in Irwinville at the time of signing the affidavit. I don't know anything about the company's buying from the heirs of Pope or Barentine or any person lot number 207 in the 3rd District of Wilcox County. I did not have any knowledge of the employment of counsel to bring suit or instruction by the company to bring suit for that land, nor of any other suit brought in the United States Court, nor that the company was to bring any suit in the United States Court. I don't know what money the Southern Realty Investment Company had—I do not know of their ever having any money or paying out any money. The company had no bank account or treasurer. As to the place of business we met at
Mr. Haygood & Cutts' office. I don't know what books the
48 company has. I don't know of any personal property the
company has in the way of stationery, office furniture or office equipment or signs. I have never looked for any signs. I do business about a block from Haygood & Cutt's office and I have never seen any signs. I have never seen any seal of the company. The company owns no personal property that I know of. I have no knowledge of the purchase of any land from Cohen or the purchase

from S. A. Conner or Mary A. Ham of any land. I have heard of it but have no knowledge of it. I understood I was one of the directors. I don't know who were the other directors. I don't think I was notified of any other meetings except those I attended. I came to Fitzgerald in December 1905 and have lived there since. Before that time I lived in Wilcox County but spent a good deal of my time at Fitzgerald. I lived at Abbeville, twenty-six miles from Fitzgerald. I don't know if the company did any business in South Dakota.

Cross-examination:

I don't know that it didn't do any. I remember at the second meeting that the minute book was read over by Mr. Cutts so far as it went at the meeting before. In so far as this affidavit states that I was not an officer or had not been, I understood that I was a director all the time. I understood the affidavit to say I was. The affidavit in that respect is incorrect as far as that is concerned. I was not familiar with the details of the transactions of this company because the purpose of the company as I understood and was informed was to invest in real estate. It was left with Haygeed & Cutts. The company was to buy and sell real estate—I did
not bother myself with the details. I am well acquainted
49 with the lot number 207 in the third district of Wilcox
County. The reasonable value of that lot of land in the month of April 1905, just fourteen months ago was eighteen hundred or two thousand dollars; valuing it by the acre according to the way lands were selling I reckon it would. At that time there was not such demand for lands as there is now. I don't think it is improved, but it is a good lot of land. Judging from what other lands are worth around there I don't think it would have been worth $5.00 per acre fourteen months ago, but I think it would have been worth $4.00 or $4.50 an acre. I have seen the impression of the seal of the company on its stock I mean that I have seen the seal itself.

The affidavit referred to as exhibit A was dated June 1st, 1905, sworn to before Drew W. Paulk, Notary Public of Irwin County, Georgia, and stated in substance that as a response to a subpœna *duces tecum* to attend Irwin County Court June Term, 1905 and produce certain papers that affiant holds some shares of stock of Southern Realty Investment Company issued to him as a compliment, but not yet delivered to him; that he is not an official or director of the company and has not been at any time, and except as above stated, has no interest in said company, and has not now, and never had any deed made by Glory Cohen to Southern Realty Investment Company, nor by S. M. Cohen to Glory Cohen, nor any book or record of any meetings of the directors, and knows nothing of said meetings or books or records.

Defendant offered in evidence the record of an action of ejectment pending in this Court brought by the Southern Realty Investment Company against Mrs. Emma Hall to receover tract of land described in deed from Mary A. Ham and S. A. Conner to the Southern Realty Investment Company hereinafter next set forth, and suit having been

filed in the Clerk's office of this court on April 14th, 1905. Said record was introduced for the purpose of showing that the Southern Realty Investment Company was maintaining said action of ejectment for said land in this Court and the contents thereof are not material to any of the questions involved in the case, and, therefore, need not be further set out. To the introduction of which said testimony the said plaintiff, Southern Realty Investment Company then and there objected upon the ground that the same was irrelevant and did not elucidate any issue in said case and did not show that the title of the said plaintiff to the piece of property involved in the pending cause against Mrs. Nancy Walker was collusive, or that the said suit was one in which the requisite citizenship did not exist to
50 confer jurisdiction on this Court—which said objection was over-ruled by the court and said testimony admitted and the said plaintiff then and there excepted to the introduction of said testimony, and still so excepts.

Defendant offered in evidence the following deed from Mary Ham and S. A. Conner to the Southern Realty Investment Company:

STATE OF GEORGIA, *County of Wilcox:*

Know all men by these presents, that we, Mary Ham and S. A. Conner of Wilcox County, Ga. for and in consideration of the sum of Twenty Five Hundred Dollars to us in hand paid, at and before the sealing and delivery of these presents, by Southern Realty Investment Company, the receipt of which *id* hereby acknowledged have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said Southern Realty Investment Company, a corporation of South Dakota, its successors and assigns, all that piece or parcel of land, situate, lying and being in the city of Abbeville, said State and County containing seven acres more or less and being known and described as Blocks "D" and "K" in the plat made of certain lands claimed by the Abbeville Land & Improvement Co. by W. A. Coble, which plat is recorded in Deed Book "N" page 45 in the office of the Clerk of Wilcox Superior Court.

The title to said above described lands unto the said Southern Realty Investment Company its successors and assigns, as against us, our heirs, executors and administrators, we will forever warrant and defend by virtue of these presents.

In Witness Whereof, we have hereunto set our hands and seals, and delivered these presents this the tenth day of February
51 in the year of our Lord, One Thousand Nine Hundred and Five.

MARY HAM. [SEAL.]
S. A. CONNER. [SEAL.]

Signed, sealed and delivered in presence of us

J. M. HAM.
JOHN CONNER.
MARTIN CANNON,
Notary Public, Wilcox Co., Ga.

To the introduction of which said deed the said plaintiff, Southern Realty Investment Company, then and there objected upon the ground that the same was irrelevant and did not elucidate any issue in said case, and did not show that the title of said plaintiff to the piece of property involved in the pending cause against Mrs. Nancy Walker was collusive or that the said suit was one in which the requisite citizenship did not exist to confer jurisdiction to this Court. Which said objection was over-ruled by the court and said deed admitted, and the said plaintiff then and there excepted to the introduction of said deed, and still so excepts.

Defendant next offered in evidence the deposition of J. A. CONNER, as follows:

My name is John Conner. I am husband of S. Ann Conner. I am Mary A. Ham's brother-in-law—I married her sister. Their mother was Mrs. Johnson. My wife and Mrs. Ham are now the only heirs of Mrs. Johnson. Two other daughters died leaving no other heirs except these two. There was a good deal of land around near Abbeville that was claimed by my wife and Mrs. Ham on account of their mother's estate. They have made efforts to recover
52 that land. Col. Cannon and Col. Cutts were employed by Mrs. Conner and Mrs. Ham—I mean Mr. Eldridge Cutts of the firm of Haygood & Cutts. They were to receive part of the recovery as fees. I don't know how much Mrs. Conner and Mrs. Ham have gotten out of that claim up to date. They got a small amount out of Mrs. Floyd, and then they got some out of Mr. H. R. Allen. They have got nothing except from the parties that I have mentioned. I know the land that Mr. Hall claims that was once owned by Mrs. Johnson and is now in litigation in the United States Court in a suit in favor of Southern Realty Investment Company against Hall. My wife or Mrs. Ham have not received any money or note for that land yet. They are expecting to be hereafter paid for that land. There is no direct agreement in reference to how they are to be paid. We just left it with Col. Cannon about the price and we didn't agree upon certain price. Nothing definite was agreed upon. I don't know when we are to get anything out of this land in dispute—no time set and no definite amount. My wife and Mrs. Ham are to receive something for the land. I know of this deal that was made with the Southern Realty Investment Company by which they got the deed to the land. Mr. Cannon made that deal for my wife and Mrs. Ham. He was to make the deed and all. They gave him unlimited power as to the deal to be made. He was at that time attorney for my wife and Mrs. Ham in reference to all the lands left them by Mrs. Johnson.

Cross-examination:

Judge Cannon had the power to dispose of this property to the Southern Realty Investment Co. of my wife and Mrs. Ham. Whatever disposition he made of it was satisfactory to them. I do not know how much they were to be paid. There was no under-
53 standing about the amount. That was left with Judge Cannon to be fixed. There may have been some amount fixed on

between Mr. Cannon and the Southern Realty Investment Company so far as I know. Whatever it was my wife and Mrs. Ham are ready to abide by it. It was left to him.

Defendant next introduced deed from Glory Cohen to the Southern Realty Investment Company, which said deed is as follows:

STATE OF ALABAMA, *Montgomery County:*

This indenture made the 23rd day of January in the year of our Lord One Thousand Nine Hundred and Five between Mrs. Glory Cohen of the county of Montgomery and State of Alabama, of the first part, and Southern Realty Investment Company of the county of Beadle and State of South Dakota of the second part,

Witnesseth: That the said party of the first part for and in consideration of the sum of One Thousand Five Hundred Dollars in hand paid at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged has granted, bargained, sold, aliened, conveyed and confirmed and by these presents does grant, bargain, sell, alien, convey and confirm unto the said party of the second part, its successors and assigns, all the following described property, to-wit:

All those certain town lots in the city of Fitzgerald Irwin County Georgia, known as lot No. Four in Square Two, in Block Sixteen; and No. Twenty-six in Square Thirteen in Block Seven; according to the recorded map of said city of Fitzgerald on the 54 deed records of Irwin Superior Court.

To Have and To Hold the said above granted and described property, with all and singular the rights, members and appurtenances thereunto belonging, to the only proper use, benefit, and behoof of the said party of the second part, its successors, executors, administrators and assigns, in fee simple; and the said party of the first part the said bargained property above described unto the said party of the second part its successors, administrators, and assigns, against the said party of the first part, her heirs, executors, administrators, and assigns, and against all and every other person or persons shall and will, and does hereby warrant and forever defend by virtue of these presents.

In Witness Whereof, the party of the first part has hereunto set her hand and affixed her seal and delivered these presents, the day and year first above written.

GLORY COHEN. [L. S.]

Signed, sealed and delivered in presence of us, the day and year above written.

THOS. GRICE.
THOS. W. MARTIN,
Notary Public Montgomery County, Alabama.

To the introduction of which said deed the said plaintiff, Southern Realty Investment Company, then and there objected upon the ground that the same was irrelevant and did not elucidate any issue in said case, and did not show that the title of the said plaintiff to the piece of property involved in the pending cause against Mrs. Nancy Walker was conclusive or that the said suit was one in which the requisite citizenship did not exist to confer jurisdiction on this Court.

55 Which said objection was over-ruled by the court and said deed admitted, and the said plaintiff then and there excepted to the introduction of said deed, and still so excepts.

Defendants next introduced in evidence the following draft and checks as being the draft and checks evidencing the payments made for the purchase of the said property from Glory Cohen. Said draft and checks were as follows:

$175.00. MONTGOMERY, ALA., *Jan.* 23, 1905.

At sight pay to the order of Fourth National Bank of Montgomery, Alabama, One Hundred and Seventy Five & No. 100 Dollars, value received and charge the same to account of

GLORY COHEN.

To Haygood & Cutts, Fitzgerald, Ga.

Haygood & Cutts, Attorneys at Law.

No. 1236.

FITZGERALD, GA., *Feb. 8th*, 1905.

Pay to the order of E. K Farmer, Cashier, $55.50, Fifty Five & 50/100 Dollars.

ELDRIDGE CUTTS.

To The Exchange Bank, Fitzgerald, Ga.

Haygood & Cutts, Attorneys at Law.

FITZGERALD, GA., *Feb.* 8, 1905.

Pay to the order of E. K. Farmer, Cashier, $119.50, One Hundred and Nineteen & 50/100 Dollars.

HAYGOOD & CUTTS.

To The Exchange Bank, Fitzgerald, Ga.

56 Defendant offered in evidence the record of suit pending in this Honorable Court brought by the Southern Realty Investment Company as plaintiff against Isadore Gelders, being an action of ejectment to recover property embraced in the deed from Glory Cohen to the Southern Realty Investment Company previously introduced, said suit having been filed in the Clerk's office of this court on April 12th 1905. Said record being introduced to show the pendency of said suit and its having been brought in this court by the Southern Realty Investment Company. The contents of said suit are otherwise immaterial and need not be set out to elucidate the questions in this case.

To the introduction of which said suit the plaintiff objected upon the ground that the same were irrelevant and did not elucidate any issue in said case, and did not show that the title of the said plaintiff of the piece of property involved in the pending cause against Mrs. Nancy Walker was collusive or that the present suit was one in which the requisite citizenship did not exist to confer jurisdiction on this court.

Which said objection was over-ruled by the Court and said record admitted, and the said plaintiff then and there excepted to the introduction of said record, and still so excepts.

Defendant offered in evidence the minutes of the directors' meeting of the Southern Realty Investment Company dated April 5th, 1905, as follows:

57 The regular monthly meeting of Directors assembled a quorum being present.

It was unanimously resolved that the company accept lot of land number 207 in the 3rd District of Wilcox County and that stock therefor be issued in the sum of two hundred and fifty dollars to J. W. Haygood and Eldridge Cutts. Said Haygood & Cutts having paid for the same out of funds due by them for the balance of stock subscribed by them.

Said J. W. Haygood and Eldridge Cutts having paid for the balance of stock subscribed for by them it was resolved the balance of their stock be issued to them whenever called for.

The lot of land above mentioned is estimated to be worth twenty five hundred dollars, but owing to adverse claim under spurious title was purchased for the company at $250.00 and so received by the company.

It was resolved that the company's attorneys, Haygood & Cutts, prepare and keep on file an abstract of the title of all lands belonging to the company, that the same be accessible to stockholders of the company and be submitted whenever called for.

It was resolved that the company's attorneys, Haygood & Cutts shall institute such suits as they deem necessary for the protection of the company's interests and for the recovery of any land belonging to the company which is held adversely to the company, if any is so held.

There being no further business the meeting adjourned.

ELDRIDGE CUTTS,
Acting Secretary.

58 Defendant offered in evidence the draft made by John D. Pope in payment for the land covered by the deed from Mrs. D. H. Pope, John D. Pope, and others, to Barrentine and by deed from Barrentine to the Southern Realty Investment Company and the subject matter of this suit against Nancy Walker; and also check by which said draft was paid. Said draft and check are as follows:

$250.00. ALBANY, GA., 2/15, 1905.

At sight pay to the order of A. P. Coles, Cashier, Two Hundred & Fifty & no/100 Dollars with exchange, value received and charge the same to acount of

JOHN D. POPE, *Att'y.*

To Haygood & Cutts, Fitzgerald, Ga.

Haygood & Cutts, Attorneys at Law.

FITZGERALD, GA., *Feb.* 20, 1905.

The Exchange Bank.

Pay to the order of cash (for draft of John D. Pope) $250.65 Two Hundred & Fifty & 65/100 Dollars.

HAYGOOD & CUTTS.

Defendant here rested.

Plaintiff offered the following evidence on said issue formed on said plea to the jurisdiction: By-laws of said company with the acceptance thereof by the Directors, incorporators and stockholders of the Southern Realty Investment Company, the same being as follows:

59 *By-Laws of Southern Realty Investment Co.*

Organized under the Laws of the State of South Dakota through Philip Lawrence, late Assistant Secretary of State, Huron, South Dakota.

ARTICLE I.—*Annual Meetings—Elections.*

The annual meeting of the stockholders, and for the election of a Board of Directors, and the annual meetings of the Board of Directors, shall be held at the office of the Company in the city of Fitzgerald, State of Georgia, on the 1st Wednesday in January of each year.

All elections of Directors and Officers shall be by ballot, and a vote of stockholders representing a majority of the capital stock is necessary to a choice. At all elections or votes for any purpose, every person acting therein, in person or by proxy, or representative, must be a *bona fide* Stockholder, having stock in his own name on the stock books of the Company at least ten days prior to the election. The Directors named in the Articles of Incorporation shall hold office until Directors are elected and have qualified, and the officers and directors who shall be elected at the first meeting of the Company shall hold office until their respective successors have been elected.

ARTICLE II.—*Quorum—Manner of Voting—Special Meetings.*

A quorum at a Directors' meeting shall consist of a majority of Directors, or less provided 2/3 of stock actually paid for is represented.

A quorum at a Stockholders' Meeting shall consist of a majority of the capital stock represented by Stockholders in person, or partly in person and partly by proxy; Provided, that there shall be
60 present in person at least three Stockholders in order to constitute a quorum for the transaction of business. A smaller number may adjourn from time to time.

At any meeting of the Stockholders, each share of capital stock shall be entitled to one vote. In all elections for Directors or managing officers of the Company, each Stockholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.

Special meetings of the Board of Directors may be held at any time by call of the President, or by any two members of the Board, on one day's notice; or they may — held at any time without notice by unanimous consent of all the members.

Article III.—*Order of Business.*

The order of business at the annual meeting and, as far as possible at all meetings of the Stockholders, shall be:

1. Calling of roll.
2. Proof of notice of meeting.
3. Reading and disposal of unapproved minutes.
4. Annual report of Officers and Directors.
5. Election of Directors.
6. Miscellaneous business.
7. Adjournment.

The order of business at any regular meeting of the Directors shall be:

1. Reading and disposal of unapproved minutes.
2. Reports of Officers and Committees.
3. Unfinished business.
4. New business.
5. Adjournment.

Article IV.—*Officers.*

The officers of this Company shall consist of a President, Vice President, Secretary, and Treasurer, who shall hold office for one year, and until their successors are elected. The Treasurer may also hold any other office in the Company. There shall be five Directors.

Article V.—*Duties of President and Vice-President.*

The President, who must also be a Director, shall preside at all meetings of Stockholders and Directors. In his absence, or in case of disability of the President, the Vice-President shall act in his
stead in all matters pertain-g to the office of the President.
61 The Vice-President shall keep himself familiar with the affairs of the company, and perform such duties as *they* may be called upon to perform by the Board of Directors.

The President shall have general supervision of the affairs of the Company, shall sign or countersign all certificates of stock, contracts and other instruments of the Company, as authorized by the Directors; shall make reports to the Stockholders and Directors, and perform all such other duties as are incident to his office, or may be required by the Board of Directors.

Article VI.—*Duties of the Secretary.*

The Secretary shall keep the minutes of all meetings; shall have charge of the corporate seal and the corporation books, shall sign with the President such instruments as require such signature, and shall make reports and perform such other duties as are incident to his office or may be required of him by the Board of Directors. He shall issue notices for all meetings; attest the signature of the President on all stock certificates issued. He shall keep a record in the "Stock and Transfer Book" of the stock issued or transferred, with the name and residence of the owner thereof, and shall record the by-laws of the Company in the "Book of By-Laws."

Article VII.—*Duties of the Treasurer.*

The Treasurer shall have the custody of all moneys and securities of the Company; shall see that regular books are kept by the Company containing its accounts; shall sign or countersign such instruments as require his signature, shall render statements of the financial condition of the Company whenever required by the Board of Directors, and perform all duties incident to his office, or that may be required of him by the Board of Directors.

62 Article VIII.—*Directors' Duties—Calling of Meetings.*

The Board of Directors shall have the general management and control of all the affairs of the company, and may delegate such power and authority to the President and other Officers as they may deem proper or expedient. A Director must hold at least one share of the capital stock.

The Secretary shall notify all Directors and Stockholders respectively of meetings, by writing mailed to them at their usual post office address, at least five days prior to the date of the meeting in case of a called meeting; the notice to state time and place of holding the meeting, and (in case of a special meeting) the purpose for which the meeting is to be held. But a Director or Stockholder may, by writing signed by him, waive all notice of any meeting.

Any meeting, of Directors or Stockholders, may be held, and any corporate act of the Company may be performed, either at the Domiciliary Office of the Company in the City of Huron, South Dakota, or at the office of the Company in the City of Fitzgerald, State of Georgia.

Article IX.—*Corporate Stock—Transfer of Stock.*

Corporate stock of the company shall be issued only when fully apid, and all of said stock shall, when paid up be non-assessable.

To render a transfer of the capital stock valid; the certificate of such stock must be endorsed by the signature of the owner, or by his attorney-in-fact duly authorized in writing, or by his legal representative, and delivered to the transferee, and such transfer must be entered upon the stockbook, so as to show the names of the parties by and to whom transferred, the number of the designation of the shares so transferred, and the date of the transfer.

Each Stockholder of the Company shall be entitled to a certificate of stock showing the amount of stock of the Company owned
63 by him.

The capital stock of the Company shall be, and is five thousand dollars, divided into fifty shares of the par value of one hundred dollars each.

All certificates of stock must be issued by number, and each certificate must be signed by the President and Secretary, and have the corporate seal impressed thereon.

ARTICLE X.—*Corporate Seal.*

The Corporate Seal of the Company shall be that opposite to this Article impressed, and the same is hereby adopted, viz:

ARTICLE XI.—*Dividends and Finance.*

Dividends shall be declared only from the surplus profits, at such times as the Board of Directors shall direct, and no dividends shall be declared that will impair the capital of the Company.

The moneys of the Company shall be deposited in such bank or banks as the Board of Directors shall designate, and be drawn out by checks signed by the Treasurer and countersigned by the President.

ARTICLE XII.—*Vacancies—Compensation.*

If any office becomes vacant during the year, the Board of Directors shall fill the same for the unexpired term; but this provision shall not apply in the case of vacancy in the office of a Director.

The Board of Directors shall fix the compensation of the Officers and Agents of the Company.

ARTICLE XIII.—*Domiciliary Office.*

The Domiciliary Office of the Company shall be and is hereby located at the office of Philip Lawrence, in the City of Huron, County of Beadle, State of South Dakota.

64

ARTICLE XIV.—*Changing the By-Laws.*

Any by-law of the Company may be repealed or amended, or new by-laws adopted, at the annual meeting of the Stockholders or at any other meeting of the Stockholders duly called for that purpose by the Directors, by a vote representing two-thirds of the capital stock; or the power to repeal or amend the by-laws and to adopt new by-laws may, by a similar vote at any such meeting, be delegated to the Board of Directors.

We, the undersigned, Directors and Secretary of Southern Realty Investment Company, constituting a majority of said Directors, do hereby certify that the above, foregoing and attached by-laws of said

Company, consisting of fourteen Articles, were and each was duly adopted by said Company as and for its by-laws at a meeting of the Incorporators and Stockholders of the Company, duly held at the office of the Company in the City of Fitzgerald, State of Georgia, on the 4th day of January 1905.

ELDRIDGE CUTTS,
Acting Secretary.
J. W. HAYGOOD,
ELDRIDGE CUTTS,
R. L. IVEY,
J. M. BARENTINE,
Directors.

We, the undersigned, being and constituting two-thirds of the Incorporators and Stockholders of Southern Realty Investment Company, a Corporation under the laws of the State of South Dakota, do hereby assent and consent to the adoption of, and we do hereby adopt the above, foregoing and attached by-laws of said Company, consisting of fourteen Articles, as and for the by-laws of said Company, this 4th day of January 1905.

J. W. HAYGOOD.
ELDRIDGE CUTTS.
R. L. IVEY.
J. M. BARENTINE.

65 Plaintiff next introduced in evidence the following record of Directors' and Stockholders' meetings of said Southern Realty Investment Company with the exception of minutes of Directors' meeting of April 5th already introduced by defendant.

Stockholders' Meeting.

FITZGERALD, GA., SATURDAY, *Jan. 4th,* 1905.

The charter of this corporation having been received a meeting of stockholders was called for the purpose of organization, the meeting being held in the Goodman Block on this January 4th, 1905.

The entire amount of capital stock having been subscribed it was resolved that Lot of Land No. 218 in the 3rd District of Wilcox County be received and accepted by the Company at a valuation of $1830.00, but there being a mortgage on the same of $330.00 it was resolved that this corporation assume said mortgage, to wit a mortgage to Mr. Thos. Berry payable Oct. 12th, 1905, and that stock to the amount of $1500.00 be issued for said land. It was also resolved that 20 acres subdivision Tract No. 4387 of the Amer. Trib. Sold. Colony Co. domain (in Wilcox County) be received and accepted by the corporation at a valuation of $150.00 and that an undivided ½ interest in lot of land No. 121 in the 7th District of Worth County be received and accepted at a valuation of $1500.00. The remainder of the stock to-wit $1850.00 being subscribed for as follows: by John W. Haygood $925.00 and by Eldridge Cutts

$925.00, said subscriptions were received and accepted with the understanding that payments would be made as called for by the Directors at such times and in such amounts as may be needed by the corporation, stock to be issued whenever called for after payments have been made but not to be issued in amounts less than $100.00 (one share).

All of the stock being represented it was resolved that stock be issued as follows:

	To John T. Haygood	14 Shares
	" Eldridge Cutts	14 "
	" John M. Barentine	1 "
66	To T. M. Parsons	1 Share
	" R. L. Ivey	1 "

leaving $50.00 to the credit of J. W. Haygood and Eldridge Cutts ($25.00 each) on stock whenever called for.

Election of officers was next in order and the following were elected, John M. Barentine, President, T. M. Parsons, Vice President, Eldridge Cutts, Treasurer and to act as Secretary until another shall be elected.

It was resolved that the number of Directors be fixed at five and Philip Lawrence having resigned as Director and his resignation being accepted the following were elected Directors J. M. Barentine, J. W. Haygood, T. M. Parsons, Eldridge Cutts and R. L. Ivey.

Haygood & Cutts were authorized to act as attorneys and counsel for the company, and authorized to buy and sell lands for the Company.

It was resolved that the Directors have monthly meetings on the first Wednesday in each month unless called off on account of no business requiring a meeting, in which case the Secretary will so enter in the Minute book.

The by-laws as prepared by Philip Lawrence were unanimously adopted with alterations as made by the Secretary.

There being no further business the meeting adjourned.

ELDRIDGE CUTTS,
Acting Secretary.

Directors' Meeting.

FITZGERALD, GA., *Feb.* 1*st,* 1905.

On account of business engagements of Directors, the Monthly Meeting was adjourned to Feb. 3rd 1905.

ELDRIDGE CUTTS,
Acting Secretary.

67 *Directors' Meeting.*

FITZGERALD, GA., *Feb.* 3, 1905.

The meeting of directors having been regularly adjourned to this date now assembled, a quorum being present.

It was resolved that the purchase of lots Nos. 4, Sq. 2 Bl. 16; and 26, Sq. 13, Bl. 7 in City of Fitzgerald, Ga. be approved and ratified; said lots being estimated of the value of $2500.00 but on account of possible adverse claims it was resolved that stock be issued therefor in the sum of $1500.00 to J. W. Haygood and Eldridge Cutts as they may call for the *sale*.

There being no further business the meeting adjourned.

ELDRIDGE CUTTS,
Acting Secretary.

FITZGERALD, GA., *March 1st*, 1905.

There being no business requiring a meeting of the Directors such meeting adjourned.

ELDRIDGE CUTTS,
Acting Secretary.

FITZGERALD, GA., *May* 3, 1905.

There being no urgent business and the Directors being otherwise engaged, the monthly meeting was not held.

ELDRIDGE CUTTS,
Acting Secretary.

FITZGERALD, GA., *June* 7, 1905.

Regular meeting of Directors assembled at Company's office there being present the following directors, viz. J. M. Barentine, J. W. Haygood, Eldridge Cutts, R. L. Ivey; absent T. M. Parsons. The minutes of all previous meetings were read and confirmed. R. L. Ivey was elected Secretary of the corporation.

68 After some discussion of business matters of the Company the meeting adjourned.

ROSA L. IVEY, *Secretary.*

FITZGERALD, GA., *July 5th*, 1905.

There being no business of importance no meeting was held.

ROSA L. IVEY, *Secretary.*

AUGUST, 1905.

No meeting.

ROSA L. IVEY, *Sec.*

SEPTEMBER, 1905.

No meeting.

ROSA L. IVEY, *Sec.*

OCTOBER, 1905.

No meeting.

ROSA L. IVEY, *Sec.*

NOVEMBER, 1905.

There being no business of importance no meeting was held.

ROSA L. IVEY, *Secretary.*

WEDNESDAY, *Dec. 6th*, 1905.

Regular monthly meeting of Directors assembled, there being present J. M. Barentine, Pres. R. L. Ivey, Sec., J. W. Haygood and Eldridge Cutts.

The purchase of the interest of the estate of Q. L. Harris in certain land in Worth County was explained by J. W. Haygood and the transaction was ratified by the Directors by unanimous vote. This gives the Company perfect title to 340 acres of good land being part of lot No. 70 in the 7th District of Worth County. Messrs. Haygood & Cutts loaned to the Company the money to pay for this 69 land agreeing to take in payment thereof stock in the Company at par, whenever legal provision is made for increase of capital stock.

J. W. Haygood also reported the purchase by him of the two farms known as the L. D. Taylor place in the 3rd District of Irwin County, being parts of lots 152 and 153, a total of 490 acres, which were sold at public sale on the first Tuesday in November and purchased by Haygood & Cutts for $1800.00 cash, the title to said property being taken in name of J. W. Haygood, and Eldridge Cutts. In view of several offers received for the purchase of this property and the fact that a sale may be desirable, and in view of the attack made in United States Court on the validity of the Company's charter, which might prevent a ready sale of the property, if sold before the termination of the litigation, it was, after some discussion, decided that it was best that the Company should not take this property but that the title should remain in Haygood & Cutts and if it remains unsold after the attack on the Company's charter is ended the matter of purchase of it by the company will again be taken up..

There being no further business the meeting adjourned.

ROSA L. IVEY, *Secretary.*

Stockholders' Meeting.

FITZGERALD, GA., *Jan. 3rd*, 1906.

Regular annual meeting of Stockholders was held at Company's business office in Fitzgerald the following Stockholders being present, namely, J. W. Haygood, Eldridge Cutts, J. M. Barentine, R. L. Ivey, and all the stock of the corporation being represented except three shares.

On motion the same board of Directors was re-elected, viz, J. M. Barentine, T. M. Parsons, J. W. Haygood, Eldridge Cutts, R. L. Ivey.

70 The minutes of previous year were read and transactions discussed and all the actions of the Directors and officers of the Company were ratified and confirmed.

There being no further business the meeting adjourned.

ROSA L. IVEY, *Secretary.*

Directors' Meeting.

FITZGERALD, GA., *Jan. 3rd,* 1906.

Upon adjournment of Stockholders' meeting the Directors assembled in regular meeting all being present except T. M. Parsons.

Upon motion J. M. Barentine was again elected President, Eldridge Cutts, Vice President and Treasurer and R. L. Ivey Secretary.

There being no further business the meeting adjourned.

ROSA L. IVEY, *Secretary.*

FEBRUARY, 1906.

No meeting.

ROSA L. IVEY, *Sec.*

MARCH, 1906.

No meeting.

ROSA L. IVEY, *Sec.*

APRIL, 1906.

No meeting.

ROSA L. IVEY, *Sec.*

MAY, 1906.

No meeting.

ROSA L. IVEY, *Sec.*

71 ELDRIDGE CUTTS, sworn for the plaintiff, testified as follows:

I reside at Fitzgerald, Irwin County, Georgia, and am a practicing attorney, lawyer. I commenced practicing in the Spring of 1887. It has been about 19 years, a little over, I believe. I am acquainted with Judge J. W. Haygood, He and I are partners in the practice of law. I am connected with the Southern Realty Investment Company. I was one of the incorporators of it. I am a stockholder and director in it. The charter, I believe, is in evidence. I think it is dated December 4, 1904. As to what I had to do with the organization of that company, how it came to be organized the purpose of its organization, etc., I will tell all I can, if I am permitted to do so. I want all the facts to be known. I have been practicing law down in what is called the "Wire Grass Section" of Georgia for a number of years. There is a great deal of land in that country being bought and sold. It has just recently commenced having considerable value. There are a great many little investment companies, land companies of various kinds, in that part of the country, I have had quite a number of opportunities to make little transactions in the way of dealing in land on a small scale. I wanted to make some investments of that kind. I specially wanted to buy some land wherever I could get it, on account of the fact that there is a very fine quality of land in that section of the country, especially right around where I live. The land can be bought very cheap in the natural condition that it is in, after the principal part of the timber has been removed from it. That is, it can be bought anywhere from a dollar an acre up, and in fact a good deal of it for less than a dollar an acre about that time. There has been quite a rise in values in the past year or two. While the land can be bought very cheap in that way, it can be cleared up at a very slight expense.

72 My purpose was, my idea was, to buy such land as I could in the natural condition like it was, wild, and then to improve it. Because when it is improved it then becomes very valuable land. That which can be bought for a dollar or so an acre, after being improved, is worth from ten dollars an acre up, very often a great deal of it sells higher than that. I thought it was a good field for investment. Judge Haygood and I had been associated together in some land litigation before we went into partnership. He seemed to have the same ideas about it that I had. I have always had the idea that to appear to engage actively in any business outside the practice of law had a tendency to injure a lawyer's practice. I did not care, therefore, to be doing any considerable amount of business in the way of real estate, in a way that would cause me to advertise it or to make it known. I simply wanted to make investments as I had the opportunity and spare cash to put in it. So we decided to form a corporation for that purpose. We considered it for some little time. We discussed the propriety of going into a corporation. We considered the desirability of incorporating under the Georgia law or under the law of other states. While we had that matter under discussion I got—I had among my law books a book giving the corporation laws of the different states. I investigated those things. I also got in communication with a company in New Jersey, which made a specialty of organizing corporations under the New Jersey law. I considered the propriety of getting an incorporation under that law. I also got in communication with Mr. Philip Lawrence who represented himself as having been for a number of years Secretary of State of South Dakota, and I investigated the South Dakota law as to corporations. I found under that law we could get a charter immediately upon making application
73 without the necessity of any advertisement, and I found that the expense of it was very slight, and I thought it had about the most favorable corporation laws of any state I could find—that is from the limited examination I made. Of course I did not undertake to go into it at any very great length. When we finally decided we would incorporate, we decided to get a charter under the laws of South Dakota. We arranged with this Mr. Philip Lawrence of Huron, South Dakota, to get a charter for us. We paid him a fee for that purpose, and we arranged with him to have an office in Huron, South Dakota, at his office. We paid him for the privilege, for the service. The domiciliary office there, I presume you would call it. With that office there at the same time we had the right under the South Dakota law to have a business office anywhere else we pleased, and we named in our charter the business office at Fitzgerald, Georgia. We have kept every since the corporation was organized an office of that kind in Huron, South Dakota, at the office

of Philip Lawrence, and we keep on file there a copy of our charter and a copy of our by-laws. I am not sure whether I sent any copies of other proceedings or not, but every since we commenced we have kept that office, and we have paid Mr. Lawrence for services in keeping an office there for us. He is named as our agent there, so if it was ever necessary to serve any papers, he would be the party to be served. Referring to the stockholders' meeting showing acceptance of the charter of this Company, and that lot of land No. 218 in the Third District of Wilcox County was turned over to the Company at a certain valuation, that land was once owned by Mr. Uriah B. Harrold, of Americus. At the time of this stockholders' meeting, Judge Haygood and I owned it. It was not in litigation. It has never been in litigation that I know of before or since. The Southern Realty Investment Company owns that lot now. I suppose it is worth probably $5.00 and acre. I think I returned
74
it for taxation at $2,250.00. I was going to say that at the time we bought that lot, we did not know that there was any adverse claim to it at all. When we bought it and got title papers from Mr. Harrell. I believe that I stated that there was no adverse claim to it, but I found where in addition Mr. Harrold had bought up another title to it, although he had this title I have referred to. We found from that rather there had been another claim while it was owned by Mr. Harrell. At the time we got it, so far as I knew there was no adverse claim to it. I have learned since that there was an adverse claim to it, but that claim also has been abandoned. There is no adverse claim to it now. There was no adverse claim so far as we knew at the time of the formation of this corporation, when that land was put in. About this twenty acre tract of land, that was part of the American Tribune Soldier Colony Company property purchased originally by the Colony Company and subdivided into tracts. I don't remember the land lots. It has never been in litigation. There has never been any question about the title that I have ever heard of. I don't know of any adverse claim to it. There never has been so far as I know.

As to lot of land No. 121 in the Seventh District of Worth County—undivided half interest of which was turned over to this Company, there is a dispute as to the title.

At the hour of adjournment yesterday afternoon I was stating to the Court the history of the organization of the plaintiff Company in this case. The reasons that were considered as inducing us to form any corporation at all, were that Judge Haygood and I desired to make some investments of the character I spoke of yesterday, jointly, and we thought it would probably be kept up for some time, and we thought it would be advisable, be preferable, for several reasons to have it in the name of the corporation, rather
75
than in our individual names. Among the reasons I might mention the fact that in case of death of either one of us there would be no trouble about the division of the property, because our interest in it would be represented simply by stock, or in case either party desired to make a sale of his interest, it could be done much more easily by transfer of stock than by any sale or division

of land which might not be so readily agreed upon as to division. And then, while we did not have any expectation of going into the business in any way that would raise any question of financial liability, we did not anticipate any trouble of that kind, still we preferred to have it in the way of a corporation. We discussed as you recall, the results which might ensue after the dissolution of the partnership or corporation by death. Yes, sir, by the death of either one of us there would come a question as to the settlement of the estate, which would be involved in the settlement, whereas if represented by stock there would be no question as to such matters as dower, for instance, or years support for the widow. While we did not have any idea about working it for any limited time, we did not specially discuss the matter of dissolution of the corporation. We expected to continue to engage in that way just as long as it was agreeable for us to do so, for an unlimited time. As to reasons inducing us to take out a charter in South Dakota, or a state other than Georgia, rather than in Georgia, I stated a portion of that yesterday, but did not finish it. One reason was that we decided finally that we would form a corporation we wanted to do it as quickly as possible. Our information was that under the Dakota law we had only to file an application for a charter and it would be immediately granted, whereas under the Georgia law we would have had to advertise for four weeks in a newspaper and then wait until
76 such time as we could get the Judge of the Superior Court
into our County for the purpose of granting a charter. The Judge of the Superior Court at that time resided in Eastman. A few weeks after that his term expired,—his term expired last December,—the Judge who succeeded him was Judge Martin who lived at Hawkinsville, both of those places are at some distance and very inconvenient of access to Irwinville, the county site of Irwin County, which is ten miles from Fitzgerald through the country. There are railroads going to it, but the railroad schedule is so inconvenient that the railroads practically are not used in going from Fitzgerald. The next term of the Superior Court would have been the first week in March, 1905. It is a large circuit, and there is a great deal of business in it. The regular courts begin in February. I am not sure whether he had any adjourned terms set in January or not, I think he did. There are generally adjourned terms held, at least set to be held, some times they are postponed. Being shown the minutes of the corporation introduced in evidence January 4, 1905, and asked to state whether there had been any litigation about any of the property mentioned in those minutes as being turned over to the corporation, which would have been of sufficient value to have been cognizable in the United States Courts, I answer No. The most valuable piece of property put in in the beginning was Lot No. 218. We fixed the value of that at $1,850.00, or $1830.00, and I suppose that was full value for it at that time. I think now it is worth something more than that. What was the first transaction which we had after the organization of this corporation, on behalf of the corporation, in the purchase of any property, was the purchase of the two city lots in Fitzgerald, from Mrs. Glory Cohen. My recollection

is it was on the 23rd day of January, 1905. At the time of
77 the organization of this corporation, we did not have any
contract for the purchase of this lot, or any understanding or arrangement or agreement looking to the purchase. Mr. Cohen and Mrs. Cohen were residents of Montgomery, Ala., at that time, and I had no idea that either one of them would be in Fitzgerald. I did not know anything more about the fact of their having a claim to this lot than you know. This corporation was not organized with the purpose or with the expectation of the purchase of this Cohen lot or either of them. I did not know the existence of the lot. I knew of course that there was a piece of land. I did not know the number of the lot. I did not know who claimed it. I did not know that Mrs. Cohen had any claim whatever to any land in Fitzgerald. This corporation was not organized for the purpose of giving jurisdiction of suits to the United States Courts. As to the transaction with the Cohens, I can not be sure about the exact date on which the offer was first made to us, but I am quite sure it was not exceeding one week prior to the 23rd of January, the date of the deed, and it is possible that it was on that very day. I am not sure whether when Mr. Cohen stated to us about his wife owning that lot and desiring to sell it, whether Mr. Cohen wrote to his wife—Mr. Cohen told us about his wife owning this land, that he had no authority to sell it for her, but that if he could make a sale of it, that he would submit any offer to her that we would make, that he thought reasonable. We finally made him an offer which he was to submit to her; Now the part I do not remember with absolute certainty is whether that took place on the 23rd of January and the deed was then prepared. The deed in fact was prepared in our office and sent to Mrs. Cohen with instructions to make a draft on Haygood &
Cutts for the cash payment that was agreed upon. But now
78 whether that transaction with Mr. Cohen all took place that
day, or whether he was in there four or five days before that time and submitted this offer, and waited to hear from his wife before coming again, or not, I am not quite sure. At any rate I know that it was not as much as a week before the 23rd of January the date of that deed, when the first offer was submitted, if it was not in fact submitted that same day. That was the first that I ever heard of Mrs. Cohen having that lot of land, town lot. I did not seek Mr. Cohen to solicit the purchase of the lot. Mr. Cohen is an old friend of mine. I knew him many years ago in Americus. I was on good terms with him. He came over from Montgomery and was stopping there in Fitzgerald for a few days. The first I knew about the land was when I came into the office of Haygood & Cutts and found Mr. Cohen and my partner, Judge Haygood, in conversation, and the conversation was then repeated to me, and the effect of it was that Mrs. Cohen owned this city lot. There were two city lots, one of them was of some considerable value, while the other was comparatively insignificant in value. Mr. and Mrs. Cohen now reside in Jacksonville, Florida. They then resided in Montgomery, Alabama. I think they left Georgia in 1898 and went to Montgomery, Alabama. I am not sure that is the exact year. I know

that they have been gone five, or six or seven years, something like that. Mr. Cohen has been in business in Montgomery, been residing there. At the time of this purchase of this lot, I was not representing Mr. Cohen in any criminal transaction. I did not know of any criminal proceeding against him. It was not a part of the purchase of this lot that I was to represent him in any criminal proceeding. As to this Cohen transaction, we agreed upon a price that our Company was to pay for that land, and we agreed upon the
79 terms of payment, and the deed was prepared in the office
my recollection is I wrote the deed myself, instructions were given that the deed was to be sent through the Exchange Bank of Fitzgerald with a draft attached. That was on the 23rd of January. As a matter of fact there was some delay about getting it back, and we took it up with the Fourth National Bank of Montgomery. We had been informed that they had deposited the draft and deed in the Fourth National Bank of Montgomery, and we took it up there. We found afterwards that the draft had been sent through the First National Bank of Fitzgerald, instead of the Exchange Bank as we had directed, and we learned the draft was presented in our absence, that was the cause of the delay, and had not been again presented. When we got that information we made inquiries and found the draft in the First National Bank and we then immediately paid the draft with those two checks that I believe Mr. Wimberly has put in evidence. Part of the consideration was paid by the check of the firm, part of it by my individual check. I don't remember just what reason was for paying it that way. Some adjustment of our partnership affairs, I believe was the reason I paid part of it individually, but the purchase money went to pay for that land and was paid by us because we owed a balance on our stock which was liable to be called for at any time that the corporation called for the balance, and when this land was purchased as we owed the Company we simply paid for the land and got credit for it on our stock.

The next transaction that the Company had according to my recollection was the transaction in which the company purchased from the heirs of D. H. Pope of Albany, lot of land 207 in the Third District of Wilcox County. That is the lot now in dispute. The money that was paid for that lot was $250.00. The way that trade
80 came about; I think the first negotiation was between Mr.
Perry of Sylvester, who had been representing Judge Pope in his life time, looking after his land matters, and there was some discussion of it with Mr. Perry, and afterwards with Mr. John D. Pope, Judge Pope having died, and I think it was in April, I think, I am not quite sure about the date, the deed will show for that, we saw Mr. Pope and told him what we had offered to pay for the title of that lot of land, and it was agreed to, and a deed was prepared and sent to Mr. Pope to be signed by all the heirs of Judge Pope, to be sent back through the bank with draft attached for the purchase money, the purchase money was $250.00. The deed came back to the Exchange Bank as we had directed, with draft on us for $250.00 and exchange. We drew our firm check for $250.65, 65c. being the exchange paid. We paid the draft and got the deed. That deed

was made to J. M. Barrentine who is a director of our Company and the President of it. I do not recall exactly the circumstances that caused us to have that deed made to Mr. Barrentine, possibly it may be like Mr. Barrentine stated in his testimony, that it is a very common practice in that part of the country for deeds to be made to express a larger consideration than what was really paid. I say possibly that may have been the cause of making the deed recite that amount, but I would not say positively that it was. I don't really remember with positiveness all the circumstances that caused it to be done that way. Mr. Barrentine has no interest in the land personally. He has not a bit in the world unless his interest as a stockholder in the corporation gives him an interest in it. He has absolutely no personal interest in it. He has no agreement for any deed
to be made back to him to this land or any part thereof, or
81 for any other matter of value to be given back to him as a
result of this litigation, nor have the heirs of Judge Pope any interest whatever in this litigation. They certainly are not to receive anything further for this property than what was paid them before the litigation started. They are not interested in the outcome of this litigation at all that I know of. They certainly have no interest in it by virtue of any contract with the Southern Realty Investment Company or with Haygood & Cutts, or any one else so far as I know. Our contract was to purchase this lot absolutely, unconditionally, for $250.00. We paid that $250.00, and we closed the transaction, and the Popes have no further interest in it. I did not have any contract with the heirs of Judge Pope for the purchase of this property at the time this corporation was formed. I could not state just exactly the time when the contract with these heirs was made, but it was agreed upon just shortly before the date of the deed. There was a little delay about getting that deed signed on account of the fact that one of the heirs resided in Worth County. The remainder of the heirs were in Albany, Dougherty County, but there was a little delay about getting the deed returned on that account, the transaction was made shortly before the date that the deed shows, the date the draft shows.

I believe the next transaction after the Pope transaction the Company had was the transaction with Mrs. Ham and Mrs. Connor. That was in this way: Mr. Cannon a lawyer at Abbeville, was representing Mrs. Ham and Mrs. Connor in some litigation for the purpose of recovering certain lands in and near Abbeville, possibly all in Abbeville, Wilcox County, and Mr. Cannon associated me with him in that litigation. That was before the partnership of Haygood & Cutts was formed. I think it was shortly after this Pope transaction when I
said something to Mr. Cannon about buying those people out
82 and getting title. I said something to him about buying
part of the land. This particular part claimed by Mrs. Hall. This part was not embraced in the suits we were representing at that time. Those suits related to other lands that these ladies claimed by inheritance from their grandfather's estate. Well, I told Mr. Cannon that we would buy this Hall land, which was seven acres, if we could make a reasonable contract with reference to it, and we

figured out the basis of the *the* price we wanted to pay for it, substantially in this way, that the land itself was worth about five hundred dollars. While the property in suit is worth probably $2400 or $2500, in my opinion, maybe not quite as much $2200, I think the building on it and the other improvements are wo-th $1700.00 or $1800.00. There is an eleven room house on it I think. So that while the gross value of the property was I should say somewhere from $2100 to $2500, yet we knew of course that if there was any suit for it, the defendant in possession would claim the benefit of those improvements, which would throw it back to the value of the land, which I estimated to be something like four or five hundred dollars. Taking that as a basis of calculation, I told Mr. Cannon if those ladies would sell us that land at the price of $200. we would buy it. I authorized Mr. Cannon to make that trade upon that basis. If they cared to sell it for less than that we would take it, but we could pay them as much as $200. I told him that if we bought it and had litigation over it, that we would want him to represent us as attorney concerning it. I was not present when he closed the trade with Mrs. Ham and Mrs. Connor. He simply sent us a deed, and the deed was an absolute unconditional deed. I told him if that land was included in his original contract where he was representing them as attorney, of course it would have to be abrogated to that extent. We would buy the land provided they
83 would sell it to us absolutely and unconditionally at a price
not to exceed $200.00. He did not have any interest in any fee in that land in this sale. We were to pay Mr. Cannon a fee. I think Mr. Cannon is mistaken in saying it was fixed at $100. I don't have any recollection of that. We agreed that we would employ him in case if we had any litigation. He had other litigation in which this same title was involved in the state court, and I did not know that it would be necessary for us to file any suit in reference to it. There was no transaction or agreement or negotiation or understanding between me or Haygood & Cutts, or the Southern Realty Investment Company at the time it was inaugurated, for the purchase of this land or acquiring any interest therein or any agreement for the purchase of this land at the time the Southern Realty Investment Company was formed. I had not the slightest idea of getting into a trade about that land. This corporation was not organized with a view of bringing suits for this land, not the remotest. We never considered it at all. The vendors in that deed have no further interest in that land or in the proceeds of any suit that may be instituted in regard to it, nor is there any condition attached to the payment of the purchase money to result from any suit. The purchase money has not been paid, because a portion of it we became liable for, Mr. Cannon and I agreed to pay some costs in another case that was pending down there. I mean Ste*mo*grapher's bill in one of those cases, after that and lost, and Mr. Cannon, or rather I agreed so far as paying part of this purchase money I would pay that Stenographer's bill or a portion of it in that way. That was to be credited. The purchase money has not been paid for the reason that after the matter was closed up, after this suit was filed, and while we were ready to

pay for the land, Mr. Cannon informed me there was some
84 dispute between him and the vendor about the matter, like he
testified about. How much was to be paid, I don't know anything about that. The company was standing ready to pay the purchase price. It does not claim any contract for immunity from payment of the purchase money whenever demanded. The mis-understanding in reference to it was between Mr. Cannon and those parties, the vendors. So far as we were concerned our contract was we were to pay $200. for this land absolutely and unconditionally without any agreement whatever for anything else except an absolute unconditional sale. My attention is called to the minutes introduced dated December 6th, 1905, showing the purchase of the interest of the estate of D. L. Harris, in lot No. 70 in the 7th District of Worth County; there is no suit pending in regard to that land. It is vacant land, but there is no adverse claim to it. I don't know of any litigation respecting it. We had still another transaction there that I think appears in the same minutes. We bought two farms in Irwin County known as the L. D. Taylor farms for $1800 at a public sale. We bought them for the Company, but we decided at a meeting you will see in the minutes not to put them in the Company on account of this attack on the charter, we preferred to hold them out until this matter could be determined. There was no litigation affecting those nor adverse claim in regard to that. It is old settled land, farm, we are farming on it now, have croppers, have two croppers on it. I will state further tha*n* when we put in this lot 218 in the original organization of the Company, we expected to open a farm on that lot. We asked Mr. Barrentine and Mr. Parsons to go out with us and look over the land, see something about its value, and also to give us their advice about and assist about the matter of opening up a farm on it. For some reason we did not open a farm that we expected to. There is about eighty acres of land on it, timber off of it, we expected
85 to open a two horse farm there, but for some reason we delayed
it, and then we expected to open it again this year. When we bought the Taylor place and commenced farming there, we did not care to open too much at once on account of the scarcity of labor, so we again failed to open a farm on 218, but we are running a farm on the Taylor place. There is no litigation pending about 218. No adverse claim to it. Mention was made about litigation pending in the State Court in Irwin County, that relates to another lot that was bought from Mrs. Cohen at the same time as a part of the Cohen trade. It is not a separate transaction. The deed from Mrs. Cohen covers two lots. The other lot is held adversely and we filed suit in *ab*jectment in the State Court for it.

Cross-examination:

That last place, I spoke of a suit in the State Court, was too little in value to bring in this Court. The Cohen purchase did include one piece a more valuable part, that was the part we sued for in this court. We could not sue for the last piece in this Court, we sued in the State Court.

Judge Speer: How many actions have you brought in the name of the Southern Realty Investment Company?

A. We have brought four suits, one in the State Court, and three in the Federal Court.

Q. How many farms are you operating?

A. We are not operating any farms, Judge, in the name of the Southern Realty Investment Company, though we have two farms which we bought for this Company. The last transaction we had, we expected to put it into the Company and take stock for it as we had done in previous transactions but we did not put it into the Company, this last transaction, on account of the fact that we had several offers for the purchase of it. We thought if we made a sale
86 of it, possibly the attack that is made upon our charter here might affect the sale of it.

Mr. King: How many pieces of property has the Southern Realty Investment Company that are not in litigation?

A. We have lot No. 218, in the Third District of Wilcox County, 480 acres. We have lot No. 70 in the 7th District of Worth County, 341 acres. We have a 20 acre sub-division of the Colony Tract near Fitzgerald, which makes a total of 851 acres, that is not in dispute in any litigation and no adverse claims.

Cross-examination resumed:

I spoke of the Taylor place that we have a farm on. The Company does not own that, we did not put it into the Company for the reason I have stated. The title is not in the Company now. The Company does not own any place that it farms. Speaking of this lot 218 that there is no suit about and No. 70 there is no suit about, and 20 acres there is no suit about, I stated yesterday that as to the 490 acres, lot No. 218, at the time the Company took possession, up to that time I never heard of any dispute. I testified at Arwinville at the time Mr. Cohen was on trial for cheating and swindling, in selling this Cohen property. I noticed the Stenographer's report puts me down as stating differently but that is in-correct.

(Question by Mr. Wimberly:) Did you not testify on that trial, after asking you about that lot, wasn't this question asked you: At the time this Company was organized and at the time you put in lot No. 218 in the 3rd Dist. of Wilcox County, as part of the capital stock of the Southern Realty Investment Company, there were parties claiming adverse title to that lot of land, were there not? Answer: "I don't think so. Our title to that lot of land consisted of a tax deed under one of the Comptroller General's regular *fi. fas.*"
87 The next question was "Whom did you afterwards ascertain was claiming the adverse title?" and your answer to that was "I did not afterwards ascertain it. I ascertained before we bought it."

A. No sir, I did not so testify.

Q. Now, Mr. Cutts, a little more on the fact that that lot was not adversely held and you did not know it at the time: Isn't it a fact that when you bought that land from Mr. Harrold, that you had Mr. Harrold to make a transfer to you of his claim for the dammage of cutting saw mill timber, and din't you afterwards settle with Mr. Hal Lawson here before this Company acquired title to the land at all, between the time you bought it and the time the Company bought it,—the disputed claim against the Garbutt Lumber Company for the cutting of the saw mill timber on this lot 218.

A. Mr. Harrold authorized us to file suit to recover damages for cutting timber on the land. The timber had been cut by the Garbutt Lumber Company. We prepared suit and were about to file it when the Garbutt Lumber Company ascertained the title of Mr. Harrold and made no further claim to it, and we compromised.

As to whether the compromise was prior to the time the Company bought this land, I am not sure about the date of it. I could not recall the dates, Mr. Wimberly, but I can state positively, at the time we made that transfer, I did not know that there was any adverse claim to that land. I can not state that that settlement for that timber cut under an adverse claim was not made and the compromise settlement was not had before the Company took this land. I can not remember the date. We are not in possession of the land—our company,—it is wild land. I do not know of any possession
ever having been had—cutting timber was not possession. I
88 don't know if it was turpentined. I don't know by signs on
the trees it was turpentined. I don't know it was turpentined
when we bought it. I know the timber was cut off. About 80 acres on which the timber had all been deadened. I did not know about the turpentining.

Q. You spoke of not knowing—I will ask you if this is not a fact, that you have an abstract of title to practically the entire records in Wilcox County and that you were proceeding to complete it down to date when the clerk of the Superior Court stopped the employee doing that work.

A. No sir, the clerk never stopped me that I know of.

Q. Isn't it a fact that you up to the time the work was stopped for some cause had made a complete abstract of title to every lot of land in that Company?

A. I believe you speak about stopping it. I believe Mr. Hancock the new Clerk went in the office, I was having that abstract made under arrangements with the old clerk. When the new one went in office, the old clerk was to arrange with the new clerk and allow the work to go on. I think the new clerk did stop me for a while until I made satisfactory arrangements with him about getting the abstract. I had an abstract when we formed this Company. I don't think the abstract, however, was complete because we could not get it completed before I moved to Fitzgerald.

We had pending in the Superior Court of Wilcox County Georgia, the county where this land is located that our Company is now suing in the U. S. Court for, a number of land suits in which I represented the plaintiff at the time this Company was chartered. I could not tell you how many. I don't think they were approximately 75. In
fact I know I did not have that many. I will tell you as near
89 as I can remember. You are welcome to get all I can possibly
tell you. The most I remember of the cases that I had there

was on one occasion when I just as a matter of curiosity counted them. There was only 200 cases on the docket. I was counsel in about one hundred of those cases, and out of that number of cases there was probably more than half not land cases at all,—suits for money. Without regard to my other practice I did not have about 74 cases in that court in which I represented the plaintiff. All of those suits were not brought after I got this abstract up, by my firm. Speaking of this lot 218, 490 acres, I say I could not have brought suit for that in this court, because the jurisdictional amount was not sufficient. We considered it as of the value of $1800.00, when we put it in the corporation. I think it is probably worth $2500.00 maybe $3,000.00. As to whether it was worth more than this lot 207 involved in this suit, I have never seen lot No. 207. I have never seen it to know it. Of course I have been through the country some but I don't think I have ever — on the lot. That property, the Ham and Connor Property *if* probably worth more, was then, than lot No. 218. I am not undertaking to speak exactly. When it comes to value, there is obliged to be some margin or latitude allowed. I was the lawyer that examined Mr. Barrentine in this deposition that has been read. I asked him the cross questions. I do not remember the questions I put to John Barrentine, as to what land down there in Wilcox County improved or un-improved at the beginning of last year, fourteen months or more ago, was selling for. The questions are in Court. I asked him with reference to the values, something about it. Those papers are in Court. I prefer to let them speak for themselves. It is not a fact that according to
90 the way lands were then selling in Wilcox County, in the beginning of last year, that I considered the fair market value of lot 218 was over $2,000.00. We estimated it at $1830.00. We were offered $1,000 for lot No. 218. That is the most we have ever been offered for it I think. Litigation against a lot disputed title, the fact we have never been in possession of it, would have nothing to do with offers, where there is a perfect title to a lot. I do not know as a matter of fact 218 is as good a lot as 207, because I have never been on lot 207. Mr. Parsons Judge Haygood and myself drove over lot No. 218—a considerable portion of it. I can not say positively that Mr. Philip Lawrence keeps an office for the Company and is a Stockholder in South Dakota. We pay him to keep an office there, and we have his assurance that he does. We issued him a share of stock, I think last June. Since this plea to the jurisdiction was filed. We had originally issued him a share of stock. We put him down as a stockholder. At the meeting at which the meeting was organized, he sent us his formal resignation as director and that share of stock was then cancelled as you will see in that book. My recollection is that you had not filed the plea to the jurisdiction at that time. If you had I did not know it. I know it was some considerable time after the time when the plea should have been filed before I ever found out that the plea had been filed.

(By Mr. Wimberly:)

Q. In order to get the thing straight at the time this question of jurisdiction was being raised, let me read you what you testified. Didn't you testify on that same Cohen trial

"Q. What interest, if any, did Philip Lawrence ever have in the Southern Realty Investment Company?

"A. The only interest he had was that of an incorporator.

91 "Q. Did Philip Lawrence ever own any stock in this Company?

"A. Not after it was organized.

"Q. Did he before that time?

"A. There was no stock issued before the completion of the organization.

"Q. Then Philip Lawrence had no interest in the Southern Realty Investment Company?

"A. Only as an incorporator."

Didn't you testify that? Did the Stenographer get that right?

A. I think I testified substantially like that. I would like to explain this first share of stock which the stock books show was issued was never delivered at all and I am not sure whether the last share that was issued to him was. You served us with notice to produce. I looked for all the stock. All I could find, and I brought all the certificates here which I could find. Whether the other share of stock that was issued to Mr. Lawrence was ever delivered to him, I don't know. I really think probably it was not delivered. If it was delivered at all, it was delivered after that time I testified. I have here the original letters from Mr. Philip Lawrence. We paid Mr. Philip Lawrence for keeping an office out there for the Company It is not the fact that all we paid was the fees the law of South Dakota requires for getting the charter. In the letter of May 7th, Lawrence said the amounts quoted cover all expenses for charter and domiciliary office and representation for one year, for the fisrt year. We have to pay $15.00 per year to provide such domiciliary office and look after the interest of the Company and keep such papers and give such information as may be necessary. We paid him $25.00 for the fisrt year, which included the *cahrter* and his services. We pay him $15.00 for the second year just as he states there. 92 We have of file with him a copy of the charter and by laws in his office. Have never been there myself personally and never done any business there. I spoke of getting out this South Dakota Charter, and one reason I gave was the cheapness. It cost $25.00 to get that charter out there. That covered the whole thing. We paid that for the *cahrter*, certified copy of it, and his services as our agent there for one year. $15.00 a year as long as we do business for a domiciliary office. The cost of a Georgia charter, I think would have been the advertisement in this state about $12.00 for that length of paper, Clerk's cost $5.00, and then a certified copy of it would have to cost $2. or $3.00 more, and then to have gotten a Judge to have gone over there, of course we would have had to pay the Judge's expenses when he went to another county to give me a charter, which would probably amount to $7. $8. or $10.00.

Judge SPEER: Is that the practice in the State Courts?

A. That has been my practice. I think it is, your honor. I think it is the practice. I would have saved the domiciliary fees entirely.

(By Mr. WIMBERLY:)

Q. You were in such a rush for this charter that your purpose was to send out to South Dakota on that account.

A. I don't say that either one single motive controlled us in making that decision. I say there were several reasons.

Q. Let me call your attention to the fact, Mr. Cutts, that the first letter you wrote Mr. Philip Lawrence in which you asked him about getting you a charter was in May, 1904, and you did not get back your charter until December, 1905.

93 A. We did not decide we wanted it until about the first of December. When we reached the decision we wanted it right away. While we had it under advisement we were in no special hurry from May until December, but when we did reach a decision we were afraid we might be delayed if we had to wait for a Judge to come. That was one reason. We would probably have had to wait until March in order to have got a Judge to sign it. We had not done a great amount of business. We have had a few transactions. We never had any transactions big enough to require to keep a cash book about it. We have never had any transactions enough to require me to put money in the bank or to draw a check on a bank or to keep a day book, or ledger. These minutes is all that we kept for the Company. Of course we paid money that was paid in, we paid ourselves, we have got our individual means of keeping an account of those things. I could draw off a financial account if I was in my office, in twenty minutes. I could draw off a financial statement of everything the Company has done in twenty minutes, from the records of the Company. In fact, the minutes will show practically every transaction we have ever had at all. We were not able to go out and do a regular real estate business like real estate agents do. Our purpose was simply to make such investments as we could find that we thought would be profitable and proper to make. One of the main purposes you will, see by our charter we have got was to operate farms. We expect to open up some farms on this land.

(By Mr. WIMBERLY:)

Q. You spoke about being able to draw off a statement in thirty minutes, let me call attention to the fact that one of the papers you were called on to produce and for which you have given a sworn response you did not have any ledgers, journals and day books, showing the business done by the Southern Realty Investment Company. That does not say whether they were kept in the Company's name or whether kept in Haygood & Cutts' name—showing its business. Have you got any books that show its business? Why didn't you bring those books along? 94

A. Simply because I could not possibly understand what the notice called upon me to bring. For instance, my individual books that would show I gave that check that you have got there. I could not understand your notice to call for any individual record of mine. We have got no records of the Company. Our transactions appear on the minutes there. I do not think the Ham and Connor transaction appears on the monutes. This is the only exception. I do not know any other exception. Eliminating the time that we organized during the intervening time between our first organization and the time of filing of these pleas to the jurisdiction, land transactions we had as appears from the minutes were the purchase of the land from Mrs. Cohen was one transaction. The purchase of this land from the Pope heirs was another transaction. That is all. That is not all the meetings that were held. That is all the transactions relating to the purchase of real estate. As far as the completeness of these minutes is concerned, of the three transactions we had subsequent to the organization and prior to the filing of the plea to the jurisdiction, one is omitted from the minutes and two are on the minutes. And these three transactions are all of them transactions out of which these three suits in the United States Court arose.

(By Mr. WIMBERLY:)

Q. So that, if you pass the time of your organization and get in good running shape to do business, from the time that elapsed after you completely organized, up to the time of the filing of this plea to the jurisdiction, every transaction that the Company had was three transactions that landed these three suits in the United States Court.

95 A. I believe so.

It does not appear in the minutes what amount Haygood & Cutts are to be paid for their services in conducting these suits. There are no contracts in existence showing what was to be paid for the recovery of these lots. We have never made any contract. The minutes show that the attorneys were instructed to bring certain suits. They do not specify them by name. I will show you what they specify. In the minutes of April 5th is contained the following: "It was resolved that the Company's Attorneys Haygood & Cutts shall institute such suits as they may deem necessary for the protection of the Company's interest, and for the recovery of any land belonging to the company which is held adversely to the Company, if any is so held."

Judge SPEER: Isn't that practically a resolution on the part of Haygood & Cutts that Haygood & Cutts shall be employed to represent certain cases.

A. Well sir, Haygood & Cutts owned a majority of the corporation.

(By Mr. WIMBERLY:)

Q. You owned forty-six out of fifty shares.

A. We owned forty-five out of fifty shares, and the other five nobody paid any money for. Haygood & Cutts donated them. They were paid so far as the Company were concerned by Haygood & Cutts. They were donated if you call the fact that the services of Directors and as President and as Secretary is not worth anything at all. Those shares were issued to Haygood & Cutts in return for property Haygood & Cutts put in in the original organization. They did not belong to the Company after Haygood & Cutts paid for them.

There is no cash book and no cash. We have to make a cost deposit in order to bring suit in the United States Courts. 96 Haygood & Cutts furnished the money that was used for the purpose of paying costs. Oh, yes, we do charge it to our clients. There is not anything on the books on that subject. There is in the book a minute showing that stock was to be issued to Haygood & Cutts when provision was made for increasing the capital stock of the Company. Whatever we paid out of course we expected to increase the stock for. We have no express contract about fees. I would like to explain. Our transactions that we had up to the time this issue was raised were so few that as I stated, I could have put those books in shape in the way of a cash book and ledger in a very few minutes, I had expected to make a particular record of it. I just simply did not do it on account of pressure of business. After this issue was raised I would not do it because I did not care to make any entry in the books,—any kind that would appear to be made for the purpose of meeting this issue.

(By Mr. Wimberly:)

Q. Didn't you put in evidence yesterday, to meet the same issue, the biggest part of this book.

A. I mean this, Mr. Wimberly, if I am permitted to say it, I did not refrain from entering the minutes there of meetings that actually took place, but we had made up no cash book, and did not care to make up a cash book and ledger while this matter was pending, because if I did it would be subject to the inquiry of being made pending this issue. I can, and I yet expect to draw off a complete financial record of the Company's business. Of course it will be short anyway. I do not know the exact date when the minutes of April 5th on page 15 of minutes were entered up. I am a short hand writer. Sometimes like I do in my law business or any other business I make notes in shorthand and on some of these occasions I think I made my notes in shorthand and afterwards wrote 97 them out, some of them. I could not tell you which occasions they were to save my life. I do not know that there was any of them that were delayed more than possibly a day, possibly they were written the same day. Beginning April 5th the minutes beginning on page 15 are in blue ink. It is bluer. The other is black back of that. There is some that is different ink, not exactly the same as of a later date. The minutes are usually made immediately after the transaction or shortly afterward. I think possibly on one or two occasions I made shorthand notes of what took place. Then transcribed it into that book, but I, of course, could not undertake to say what that was. I did not attach any importance to that particular matter. I was merely undertaking to keep a record of the minutes of the Company.

Q. Mr. Cutts, the Georgia Law requires all companies engaged in the real estate business to pay tax. Requires its officers to make returns. Have you ever entered your business as a real estate business.

A. No sir.

Q. As people engaged in handling and investing in real estate.

A. No sir.

We hav-n't got any sign to show that we have got any business. We don't want any sign. We do not care to publish it that we had that sort of thing. We had no reason to do so. We have a seal, and these minute books, and these shares of stock, and the Phillip Lawrence letters. Except the deeds we expect to offer in evidence in these land suits, I think that is about all. I don't recall,—Miss Rosa Ivey is our Stenographer. We issued a share of stock to Lawrence, but he does not appear as an officer. We have a domiciliary office in South Dakota at present but we have no director there. We have
98 Mr. Lawrence there as our agent, keeping office for us. I testified about half of lot in Worth County as one of our pieces of property. There is an adverse claim to that. We gave $400 for that Cohen lot of land.

The check I brought in was for $175.00 I have got three other checks drawn by us individually. I have given three other checks showing payments of about $80.00 more. These do not make the entire consideration of the Cohen matter. I think we have given some other checks, but I am not sure. Those were all I could find. The first check is issued to Mr. S. M. Cohen. Mr. S. M. Cohen was the husband. After the trade was made Mrs. Cohen authorized us to make payments to Mr. Cohen. When we bought that property I knew Mr. Gelder had some sort of claim to it. There was a matter came up there which brought the whole thing to my knowledge. It is not possible for me to tell how much I knew at a particular time, because I shortly afterward found out the whole thing, but I did know—I think it is recited there was some sort of claim to it on the part of Mr. Gelder. Mr. Gelder lives in our town, in a few doors of our office. I don't know if he is there practically all the time. I don't think we saw Mr. Gelder to find out what claim he had before our Company bought it. I did not know that this same man whom I made the check in favor of who negotiated this sale to us had sold the same land to Gelders, and Gelders had paid the full value and he had the money in bank at the time we paid him for it. I did not know all of that. I stated to you, I can not tell how much I did not know at that particular time, because afterwards I found out all the details of the transaction. I did know at that time Mr. Gelders had a claim to that lot. I didn't know he had paid for it to this man Cohen that I had negotiations with. I didn't know the deed
99 of S. M. Cohen to Mrs. Glory Cohen dated back of the Gelders deed, was a deed that Mrs. Cohen never paid him a cent for. On the contrary my information was to the contrary. It is not a fact that I took a deed from Mrs. Cohen to the Company instead of bringing suit in her name because inasmuch as it was a gift to her she could not recover against an innocent purchaser under the statute of Elizabeth. I know a man named J. B. Hall. I do not remember the time Mr. J. B. Hall employed Mr. Eldridge H.

Cutts a lawyer down there to examine his title to this property, that is now being sued for.

(By Mr. WIMBERLY:)

Q. I will ask you if it is not a fact that Mr. Hall employed you as his attorney at law, he as agent for his wife, to examine title to this land, prior to the time that your Company bought it, and if it is not further a fact that you approved the title as being good, and he bought it relying on your approval of it as his attorney.

A. If that was done, I don't have the slighest recollection of it. It is the first time I ever heard of it. I have had occasion in my practice to examine a great many titles. I can say I do not have any recollection of any such transaction as that at all. I don't believe any such transaction ever took place, but I can state this though that the title of Mr. Hall has been approved by a good many attorneys before the defect in the title was known. It was not discovered by me. The first I knew of it Mr. Cannon told me about it. He told there was a sale by some party claiming to be guardian that was not guardian, had no authority to sell. I agreed to buy this from Mr. Cannon and our clients provided I could buy it on the basis which I told you. I don't know whether I used the words "At a fair 100 price" or not. That was what I considered a fair price under the circumstances, something like half value. I considered $200 a fair price under the circumstances. I considered that all we were willing to pay for it. When I paid $200.00 and the deed was drawn Mr. Hall was in possession of the house with the improvements. I think they were living on it at the time. If they were not, they moved in shortyly afterwards. It was a right new house.

(By Mr. WIMBERLY:)

Q. Wasn't that house built there in the interval between your approval of the title as good for Mr. Hall and the time of your buying it for your Company for Mrs. Ham and Mrs. Connor?

A. I do not believe that I ever approved that title. If some writing can be shown where I did approve it——

Q. You speak about writing. You can not find very much writing about your Company having anything to do with it on your own minutes, can you? Mr. Cutts does not put everything in writing does he?

A. No sir. I noticed that was omitted, and I would not add to these minutes for the simple reason I told you awhile ago: I did not care to add anything while this question was pending. I not-ced the omission of that transaction on the minutes.

Q. An- this lady, you were to pay $200 for this land you are suing in Court that had jurisdiction only over $2,000, was your client at the time?

A. I was working with Mr. Cannon.

Q. She was your client.

A. In some other cases.

Q. Weren't you in this case?

A. No sir, there was no case pending here.

Q. In a technical sense weren't you associated by Mr. Cannon for the purpose of bringing the case?

A. I was to bring whatever cases we saw fit to bring.
101 I believe I was going on to state that we did not expect to
bring any of those suits because some of the land had not been in possession long enough to render it necessary. We wanted to bring suit on this title, and we did bring two or three suits down there on account of the fact that the statute of prescription was about to affect the case, but there were several that were not brought. Some have not been brought yet. It is not a fact that I just transferred to our Company those suits where the statute of prescription was about to run, where there had already been a suit brought in the state court, and transferred to our company from time to time others in time to save prescription as to them. We never contemplated making any other transfers. You spoke about some suits. I have never had, and we will not transfer any suit for any such purpose as that. The Company was not formed for any such purpose. It is altogether foreign to it. What we have had transferred to us we have bought honestly and except in some few instances, fully paid for them. Haygood & Cutts paid Mr. Harrold $300 for lot 218. Mr. Harrold told us that we could sue for damages for the cutting of timber by the Garbutt Lumber Company. Judge Haygood & I got the payment for these damages. That 20 acres, the American Tribune Soldier Colony Company tract, we paid $100 for at administrator's sale. We bought that, I think it was some time before the Company was chartered. I know it was some time during 1904. It must have been a few months Haygood & Cutts owned that land at the time the Company was chartered. The land was cleared and had been fenced, but my information was the fence was down at the time. There was no adverse claim to it. Nobody was living on it. It was cleared land. We are not operating any farm there. I do
not know personally if there are any improvements, or pos-
102 session on it now. My information was a portion of it was
cleared and fenced. We have not rented it out to anybody from the time our Company bought it up to the present there has been nothing done with it. We took that at a valuation of $150.00. The other piece we put in the organization, one-half interest in the Seventh District of Worth County, there is adverse claim to that. This lot 218 there was no adverse claim to. I did tell you we had the right from the parties that sold it to us to collect for cutting timber. I did not say under an adverse claim. I said we bought the right. Mr. Harrold was about to sue Garbutt Lumber Company — damages for trespassing in cutting timber. The Garbutt Lumber Company is abundantly solvent, and they paid us for cutting that timber too.

Redirect examination:

In regard to the sale from Ham & Connor, we have an unconditional deed. In regard to this land in Worth County which Mr. Wimberly asked if there was any adverse possession, the adverse claimant is a man by the name of Horkan.

JOHN W. HAYGOOD, sworn for the plaintiff, testified as follows:

I live at Fitzgerald. I am a member of the firm of Haygood & Cutts. I am one of the incorporators of the Southern Realty Improvement Company. We had it incorporated for the purpose of operating it, buying and selling land, going a legitimate business, only possible object we had in view. Mr. Cutts and I discussed the matter as to where we could obtain a charter some considerable time before it was obtained. He and I finally agreed that the most feasible charter was the one we obtained. So far as bringing suits was concerned, we never had any such motive or never discussed
103 it. The thing was not discussed at all. We thought we had the right to obtain a charter and pay for it. The laws of South Dakota, as we understood them, gave us the right to make application for a charter there, provided we complied with the law. We have done so. We got the charter and organized as the minutes show here. Whatever we done was honestly done and was honestly intended. So far as obtaining the charter with a view of bringing suits in this Court and no other Court, why it is not true. The only object in the world we had was to conduct the business of buying and selling, land. In regard to the land originally put into this Company as named on the minutes, there were no suits pending about them at the time that we put them in. No suits in the world have been brought about that land 218 lot. Mr. Cutts and I investigated the title to that property. I knew Mr. Harrold, I knew he was solvent. I knew he was a man who had plenty of property. His counsel over there made the trade with us and we bought the property at private sale in good faith. We have paid our money for it. We have not had the slightest litigation concerning it. None is pending about it now. None in the world is in contemplation that I have ever heard of. About the piece of property from the Old Soldier's tract, that property was not in litigation. It has not been in litigation. I bought it at administrator's sale. I was present when I bought it, and I bought it from, as the deeds will show, an administrator. There were several other parties who bid on it at the time. I paid more for it than any one else. In regard to the land in Worth County we put in, we did not purchase that land with any expectation in the world of litigation. We knew we were buying the true title. We knew there was no trouble about it. We did not transfer it to this Company for any purpose of litigation.
104 There is no trouble about it. The property is there. We can go in possession any minute in the world. I have gone over it. It is a nice piece of land, about 340 acres of it. After we bought it I had it surveyed. Nobody sets up any adverse claim to it. As to this property purchased from the Cohens, I was present when the contemplated trade was discussed and the matter was closed up. Mr. Cohen agreed to take $400 for the property, a deed was sent as related by Mr. Cutts, first sent to the First National Bank of our town. We were corresponding with Mrs. Cohen, and we could not understand why we should not get the deed. Finally we located it in a different bank from the one that we do business in, that we carried our private bank account in. We found it. I don't know, I

could not undertake to tell the court and jury why it was Mr. Cutts gave his individual check and the check of the firm. The only reason that I can see for that is that Mr. Cutts and I frequently have our adjustment between us as partners and he no doubt accounted to me in that way for the amount we had to pay. We had no agreement contract or understanding with Mr. and Mrs. Cohen or any one else for the purchase of the property when this Company was chartered, nor at the time the Company was organized. We did not know that Mrs. Cohen had title to the property at the time we organized this Company. We did not know she had any property in Fitzgerald at all.

Mr. Cohen first approached me about it. I told him that matters of that kind I would prefer seeing Mr. Cutts or Mr. Barrentine or some one else, who is connected with the Company, and my recollection is that he went off and was gone for a day or two, and then came back, and he took the matter up with Mr. Cutts and me, and we told him if Mrs. Cohen wanted $400 for the property we would pay
it. Cohen related Mr. Gelders had treated him outrageously
105 about the matter, and had got some kind of claim on it. The
Cohens lived at that time in Montgomery, Ala. They live now at Jacksonville, Fla. If they have lived in Georgia between those times, I have had no knowledge of it, sir. I do not remember the exact date when the contract was made between the heirs of Pope for the purchase of that property. Judge Pope and I were very friendly, on very friendly terms, and Mr. T. R. Perry was also very frequently with him. I think the first transaction that we had about that land was through Mr. Pope and Mr. Perry together when I was over at Albany. Judge Pope's health afterwards became very bad and he died. But Judge Pope knew something about it, as he related it to me, and we afterwards carried out as near as we could the direction that had been discussed in an informal way with Mr. Perry and Mr. Pope. There was some delay about it. Mr. John Pope is manager of his father's business. They did not all live there. Mr. Henry Pope lives at Sylvester. There was some delay about signing it on account of his health. He is almost an invalid, and after the trade was agreed upon Mr. John Pope told me why the matter was delayed. They finally agreed to take $250.00, and Henry signed the deed, and they sent it as we agreed upon. We bought the property. The property was not bought at all for the purpose of testing the title by litigation in the name of this Company. The Cohen property was not bought for any such purpose. No piece of property has been bought by this Company for this purpose. It is as foreign as anything that was ever thought of. Neither the Cohens or other parties have any interest in the world in this property, and they are not to be paid a cent. The loss of this litigation will fall entirely upon the Company. The parties have been paid every dol-
lar they asked for it. There are no strings tied to it in the
106 slightest way. It was an open, fair, honest transaction. Every
word I have said about the Pope property is true about the Cohen property. I am not familiar with the Hall transaction. I had nothing to do with that transaction except as Mr. Cutts com-

municated it to me. I did not make the trade. I did not discuss it with him. In regard to the piece of land that was purchased noted on the minutes of December, 1905, there was no adverse possession of that property by any one in the world. That is property I bought myself from the Harris estate. There was no adverse claim to that nor any litigation about it, and never will be. Not the slightest is anticipated. As to the reasons inducing the chartering of this corporation, I discussed the matter with Mr. Cutts. I could assign several reasons we discussed in obtaining it. We were lawyers. We thought there were opportunities that would be offered in our section of the state by which we could buy property, and of course every lawyer who lives there knows that in some instances there is some question as to the validity of a title. Mr. Cutts and I thought, and that was one reason, if we obtained a charter, the stock would not be responsible if there was any trouble on the warranty. That was one reason I had in view. I did not have much at the time, but I was accumulating some property there. And in case of my death my wife could take this stock absolutely without undertaking to make a deed to Mr. Cutts, if we owned it jointly. Another reason was that it was the most convenient way of handling the property. We thought it was legitimate. I thought so then. I think so now. This charter was not taken out in South Dakota for the purpose of forming the Company that would have the right to litigate in the Federal Court. Of course I knew we would have the right if we
wanted to exercise it, but that was not the object in suing it
107 out. We are both members of the bar of this court. I was
at the time of the formation of this charter. I think Mr.
Cutts was.

Cross-examination:

At the time I purchased this land for the Company from Glory Cohen, I did not examine the records. I did not have it examined. I did not know that there was on record the deed from S. M. Cohen to Isadore Cohen, recorded March 13, 1902, until after that deed passed to us. I knew that he had some claim on it.

Mr. Wimberly:

Q. Judge Haygood, do you mean to say that engaged extensively as you in the land title,—bringing land suits, that you yourself would buy land and pay for it without examining the records to see whether there was an adverse outstanding deed to any other person on record?

A. I bought that.

Q. Isn't it a fact that in Irwin County, and Wilcox County, you pay such close attention to the record that you and Mr. Cutts had abstracts of practically the entire records of both counties, and you would have completed them except you were stopped by the County Commissioners or Clerk?

A. That is not true, sir.

Q. That is not true?

A. It is not.

Q. It is a fact, you bring more land suits in those counties and in that part of the state than all other lawyers down there put together, isn't it?

A. I don't know about that. I don't know how many other lawyers have.

There was a house on one of the lots bought from Mrs. Cohen, but I don't remember now whether—The vacant lot is on Main street. The little residence lot I think had a house on it, I think Mr. Broadus used to occupy. I don't know whether he was Mr. Gelder's tenant or not. We sued him for it. I did not inquire as to
108 whose tenant he was before we bought. I did not know of this
Nancy Walker suit at the time our Company was formed, or that Nancy Walker had been living on that land farming it for quite a long number of years. We knew Rebecca Walker had been living there, but she was dead, and she had disclaimed having title to it. I knew Nancy Walker lived there with her mother and her brother. As to why we turned in that land on minutes at $250, when we recite it is worth $2500, I say that was the amount we agreed upon. For me to give the reasons that prompted me, I could not undertake to do so. I did not know Mr. Hall had built and was then occupying a residence on the Hall land. I have very slight acquaintance with Mr. Hall. I did not know where he lived. I did not say I bought town property, occupied by a man who had recently built a house on it and made no inquiry as to it. Mr. Cutts represented the Company in that transaction. I am willing to stand and abide by whatever he did.

M. B. Cannon, whose testimony was taken by deposition *de bene esse*, testified as follows:

I am a practicing attorney. I know Mrs. John Connor and Mrs. Mary Ham. I represented these two ladies in making sale of certain real estate in which suit is pending in the United States Court. In the suit of Southern Realty Investment Company against Mrs. Emma Hall. Mr. Cutts spoke to me about said purchase by the Southern Realty Investment Company and told me to give them as much as $200, and the reason that the money has not been paid, I spoke to Mr. Connor — it afterwards and he wanted more money. It was an absolute sale, and I explained it to them. The
109 Southern Realty Investment Company owes them the amount
of $200 for this property. I know of no conditions or limitations or anything on the part of the Southern Realty Investment Company and Mrs. Connor and Mrs. Ham whereby they recover anything more in case it terminates in favor of the plaintiff. The only interest that they have in it is the purchase price, which said Southern Realty Investment Company owes. The purchase price would have been paid long ago if it had not been for some misunderstanding about it. I made the trade with Mr. Eldridge Cutts for Southern Realty Investment Company for these lands.

Cross-examination:

I don't remember when it was that deal was made. I think about one week or ten days before the deed was made. I was employed first, and then I employed Cutts as one of the attorneys. None of that $200.00 is to go back to Mr. Cutts, at all, and I think if my memory serves me right, in addition to that the Southern Realty Investment Company is to pay me one third. I think they were to pay me $100 absolutely for my fee. I won't be absolutely sure about it. They were to pay me one third of it. My fees have not been paid. My fees are conditional, but I have been given a pro rata from the sale of the property. I have no interest at all in the case in the United States Court.

Redirect examination:

Mr. Cutts has already told me that the Company is ready to comply with their part of the trade. So far as I know this is a fair and square sale. I represented those ladies and Mr. Cutts represented the Company. It was not a sham sale so far as I know. There was no agreement on the part of Mr. Cutts representing the Southern Realty Investment Company to re-convey this property back to my clients in the event of recovery. Nor were they to have any of the recovery.

110 Eldridge Cutts, recalled for the plaintiff testified as follows:

My attention being called to so much of the stenographic report of the evidence in evidence just above, I state that this report is not correct as to what I testified. I testified that I had learned after this purchase that there was an adverse claim and that claim was abandoned so there was no adverse claim to the land. There is not now any adverse claim to the land.

Cross-examination:

I do not know J. P. Williams & Co. of Savannah still claim that land. On the contrary I know they do not.

It is not a fact that our Company has never taken possession of it or spent any money on it, on account of the fact there is a dispute. There is absolutely no dispute about it. You are thinking about some other land. We have not had occasion to take possession of it. Have never put any improvement on it; no house; no fencing.

111 The following stipulation between counsel was read in evidence by the plaintiff:

For the purpose of the hearing on the plea to the jurisdiction it is stipulated between the parties that the plaintiff can show a *prima facie* title to the lot of land sued for that is such title as would put the defendant to proof of a better title in order to recover.

It is further stipulated that defendant is in possession, and claims to be the owner of said property under claim of a prescriptive title.

Defendant in rebuttal introduced the following extracts from the stenographic report of evidence of Eldridge G. Cutts in the case of State *vs.* S. M. Cohen:

Question. "At the time the Company was organized and at the time you put in lot 218 in the 3rd District of Wilcox County as part of the capital stock of the Southern Realty Investment Company there were parties claiming adverse title to that lot of land, were there not?"

Answer. "I don't think so. Our title to that lot of land consisted of a tax deed under one of the Comptroller General's regular *fi fas.*"

Question. "Whom did you afterwards ascertain was claiming the adverse title?"

Answer. "I did not afterwards ascertain it—I ascertained it before we bought."

Defendant also introduced the following letters:

HURON, SOUTH DAKOTA, *Nov.* 1, '05.

Dec. 5, 1904.

Southern Realty Investment Company.

Haygood & Cutts, Fitzgerald, Ga.

112 GENTLEMEN: In behalf of your company and as your resident office- in South Dakota and maintain-g there your domiciliary office, I have the pleasure to report for the year 1905 as follows:

1. That I have received no notice nor been served with any paper during the year 1905 that in any way affects or concerns the interests of your company.

2. That there has been no legislation nor decision of the courts that would, I believe, affect or be of material interest to your company.

3. That your office has been maintained here at all times and in all respects as required by law.

4. That the rent of your office and the fees due as your resident officer have been paid up to December 5, 1905 when there will be due the sum of $15. which I trust you will remit at the proper time so that all may be done in compliance with the laws governing corporations in this State.

Yours very truly, PHILIP LAWRENCE.

Incorporating Bureau of Philip Lawrence, Late Assistant Secretary of State.

HURON, SOUTH DAKOTA, *Dec.* 6, 1904.

Southern Realty Investment Co.

Charter No. 19987.

Messrs. Haygood & Cutts, Fitzgerald, Ga.

GENTLEMEN: Enclosed herein please find charter of the above company, certified copy of the articles of incorporation, proxies and resignations of the South Dakota parties and copy of by-laws, all of which I hope will reach you promptly and be satisfactory in every respect.

Should you need more blanks at any time we should be glad to furnish them to you without expense and hope you may be able to send us some more business, assuring you that anything you may send us will have our most prompt and careful attention.

Yours very truly, PHILIP LAWRENCE.

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113 Incorporation Bureau of Philip Lawrence, Late Assistant Secretary of State.

HURON, SOUTH DAKOTA, *May* 7, 1904.

Mr. Eldridge Cutts, Att'y, Abbeville, Ga.

DEAR SIR: Your favor of the 2nd inst. received and agreeable to your request I enclose herein copy of our incorporation laws and a yellow form showing how to execute articles of incorporation and white blank upon which to make out application together with other printed matter. The following quotations for charters are our lowest terms to Attorneys who send us their business but we quote about $10. additional to private parties. The quotations given for different amounts of capital stock show what is to be remitted with application:

Up to $25,000	$25.00
" " 100,000	31.00
" " 500,000	36.00
" " 1,000,000	42.00
Over 1,000,000	60.00

We have secured 985 charters for non-residents inside of three years and quite a number from your own state. We furnish the South Dakota incorporators. Only three incorporators are required, two at your end and one here. In article 5 however you name all the directors you may need, naming 2/3 there and we will insert the 1/3 here that is required under our laws but we send proxies and resignations of the South Dakota directors when we send charter so that you can elect others in their stead. Up to the present time our courts have not decided that South Dakota directors will remain on the board. Should the court decide that way any time in the future it could be very easily provided for. The amounts quoted cover all expense for charter and domiciliary office and representation, for one year. 114 After the fisrt year we have $15. per year to provide domiciliary office and look after the interests of the Company, keeping such papers and giving such information as may be necessary.

I think from the suggestions given in this letter and the copy of laws and printed matter you will have no trouble whatever in understanding what the requirements are. Should there be anything further, however, kindly let me know and I will answer promptly. Hoping to receive your application, I am,

Yours very truly, PHILIP LAWRENCE.

Dict. M. H.

115 Defendant introduced the following checks:

Haygood & Cutts, Attorneys at Law.

FITZGERALD, GA., *April* 20, 1905.

Pay to the order of S. M. Cohen $50.00, Fifty & no/100 Dollars.

HAYGOOD & CUTTS.

To the Exchange Bank, Fitzgerald, Ga.

FITZGERALD, GA., *July* 27, 1905.

The Exchange Bank

Pay to cash $20.00 Twenty and no/100 Dollars.

HAYGOOD & CUTTS.

FITZGERALD, GA., *July* 31, 1905.

The Exchange Bank

Pay to cash $10.50, Ten & 50/100 Dollars.

HAYGOOD & CUTTS.

The foregoing constitutes all of the evidence introduced on the trial of said cause.

116 In response to a notice to produce papers served upon counsel for Southern Realty Investment Company, it was shown by the affidavit of John W. Haygood and Eldridge Cutts that they were Attorneys for said Company, and held in their possession all the papers, documents and books of any kind belonging to said Southern Realty Investment Company. As a response to said notice, the said affidavit stated that the affiants had in their possession and produced a certified copy of the charter *od* said Southern Realty Investment Company; also the minute book of said corporation which was the only record they have as to the corporate proceedings of said Company from the organization of said Company up to the time of the filing of this suit; and in response to so much of said notice as called for the stock book, stock certificates, stubs of stock certificates, affiants stated that the record as to stock certificates was kept in the same book in which the minutes were entered and which was produced in response to said notice; in response to so much of said notice as called for all contracts between the heirs at law, legatees or distributees of the late D. H. Pope and the Southern Realty Investment Company, and any and all contracts and writings between said Southern Realty Investment Company and the person or persons under whom said Southern Realty Investment Company claims title to the land sued for in this action and between said grantor or grantors and Haygood & Cutts or either of them relative to the subject matter of the present suit, the affidavits stated that they had no such papers as herein described except a certain original deed made by the heirs of D. H.

Pope to J. M. Barentine, and a certain original deed made by J. M. Barentine to Southern Realty Investment Company which
117 papers were produced; also that they had in their possession the original titles from the State of Georgia down to the said D. H. Pope through several conveyances which they are ready to produce if this portion of the notice calls for such papers; also that they have in their possession and produced a certain paid draft drawn by John D. Pope for the heirs of D. H. Pope on Haygood & Cutts for the sum of $250.00 which they also produced; and in response to notice calling for cash book or cash books, of said Southern Realty Investment Company showing all moneys, receipts and disbursements from the time of the organization of said company to the present time, and entries showing payments of money and receipts of money from the time of the organization of said corporation to the time of the filing of the present suit and from that time up to the filing a plea to the jurisdiction and from that time down to the present time and all bank books, deposit books and pass books of said Southern Realty Investment Company during the same period of time, and all original checks and check stubs and check books showing moneys drawn out or checked out of bank by said Southern Realty Investment Company from the *r*ime of its organization up to the present and moneys paid in by stockholders and from other sources and moneys paid out and properties purchased by said company and moneys expended therefor, the affiants stated that neither affian*y*s nor said company has any such books or papers as are herein specified except the minute book above mentioned; and in answer to so much of said notice as required the production of all original letters and letter press copies of letters received from or written to Philip Lawrence, S. M. Cohen, Glory Cohen, A. Ann Connor and Mary A. Ham from the time of the organization of said company up to the 30th day of June, 1905, the affiants stated that they have certain correspondence, of which files were produced and from which correspondence as was introduced in evidence was taken.

118 At the conclusion of the testimony the plaintiff requested the court to give each of the following propositions in charge to the jury, such request being made separately in writing as to each proposition and not to the whole set jointly.

1. The sole issue which the jury is trying at the present time is the question of the jurisdiction of the court to maintain this suit as a suit brought by the Southern Realty Investment Co. The court instructs the jury that the evidence adduced shows that the plaintiff is a citizen of South Dakota and the defendant a citizen of Georgia resident in this district and does not show any fact which would authorize the jury to find that said suit is not one which this court is authorized to hear and determine.

2. The evidence in this case with all inferences and deductions which can be legitimately drawn therefrom fails to show that this suit is brought otherwise than for the benefit of the Southern Realty Investment Company or that any person has any interest in any recovery which may be made by it other than the inter-st as stockholders which the stockholders of said company have in it and that

is not such an interest as will de*fact* the jurisdiction of this court and the said evidence and inferences and deductions fail to support said plea to the jurisdiction.

3. The jury are instructed that the title to the property sued for is in the Southern Realty Investment Company and that there is no evidence showing that it holds the same under any contract or agreement to convey the same or any interest therein if recovered to any other person or corporation and that if it were the fact that one of the reasons why said title may have been directed to be conveyed to a nonresident corporation may have been to enable such corporation to bring suit in the United States Court, provided the conveyance
was a *bona fide* unconditional conveyance this will not render
119 the suit collusive or prevent the plaintiff from maintaining
this action.

4. A conveyance made for the purpose of vesting title in a nonresident corporation, if a real transaction intending to vest such title without reservation, will enable such non-res*u*dent to maintain a suit for the property so conveyed in the United States Court although one of the motives of such conveyance and *in* inducement thereto was the ability of such non-resident corporation to sue in such court. Proof of such motive will not defeat the jurisdiction.

5. That the stockholders of the plaintiff corporation were all citizens of Georgia or that a great majority or all of its stock was owned by citizens of Georgia or that the stockholders were many or few would not affect the status of the plaintiff as a citizen of South Dakota or defeat its right to sue in this court.

6. If the jury believe that the plaintiff corporation was formed by Messrs Haygood & Cutts and that they owned practically all of its capital stock, and that said corporation was formed by them to engage in trading in lands in Georgia and that to carry out such purpose the plaintiff corporation acquired t*o*tle to the land sued for in this case, that fact that Messrs Haygood & Cutts and the other stockholders are citizens of Georgia and are interested as stockholders in the plaintiff company would not render the plaintiff other than a citizen of South Dakota or defeat the right to sue in this court.

The court declined to give each and every one, or any one of said requests to the jury, to which refusal of the court to give said re-
quests to so charge the jury and each one of them the plaintiff
120 then and there in the presence of the jury and before it re-
tired then and there excepted and now excepts.

The court then charged the jury as follows:

GENTLEMEN OF THE JURY: This is an issue formed on a plea to the jurisdiction of this court. In cases of the character under consideration the court has jurisdiction of controversies between citizens or corporations of different states. The action brought here is ejectment and is in the name of the Southern Realty Investment Company as plaintiff, which company is alle*d*ged to be a corporation and a citizen of the State of South Dakota. The plea challenges the genuineness of this corporation in so far as it may have the right to bring a suit against the citizens of this state for the purpose of re*ce*overing lands in Georgia.

It appears that the corporatin was designed and formed by Haygood & Cutts, both of whom are counsel for the plaintiff. It further appears that they control 45 out of 50 shares of stock of the corporatin, that in the name of the corporation they have brought this and two other suits for its ostensible benefit.

The court instructs you that if the organization of this South Dakota corporation was made in good faith for the purpose of investing and dealing in lands in the state of Georgia it would have the right to bring a suit or action in appropriate cases in the United States Court for the purpose of protecting the title or interest which it may have acquired.

You are further instructed however, that if the organization of the corporation is merely colorable, that the substantial interest in its assets and in the land sued for is in Haygood & Cutts who brought the suit in the name of the corporation that if they have absolute stock control of the corporation and its operation, that by such
121 control they can direct the employment of themselves as
counsel, bring suits when they see proper in their own substantial interest and not in the interest of the corporation, that if they advance the cost and make deposits in behalf of the corporation and maintain suits without advances from such corporation, it creates a strong presumption that the use of the name of the corporation as party plaintiff is merely colorable and collusive and that suits or action brought under such circumstances ought not to be maintained by the court, for the reason that it has no jurisdiction on the ground of true diversity of citizenship Haygood & Cutts and the parties defendant all residing in Georgia, and for the further reason that the court will not lend its assistance to members of the bar who seek in this way to bring and control litigation in its forum. This however is only a presumption and may be rebutted by proof. The burden of proof of showing that the court is without jurisdiction must preponderate in favor of the defendant before the jury can find the plea is good. They should consider all the evidence in its entirety and determine whether this corporation was formed for the legitimate real estate business, or was it as insisted by the defendant formed for the purpose of enabling two attorneys to control it, to acquire professional business involving land titles and bring the same in a court of the United States because of the state in which in the absence of such corporation the jurisdiction would reside.

If the jury find the contention in favor of the defendant represented by Messrs. Wimberly and Lawson their verdict will be we the jury find for the plea and that the court has no jurisdiction. If the find for the plaintiff, namely in favor of the parties represented by Mr. King, their verdict will be we the jury find against the plea and that the court has jurisdiction.

122 The plaintiff in the presence of the jury and before it retired, excepted to the following portion of the Charge of the Court, to-wit:

You are further instructed, however, that if the organization of the corporation is merely colorable, that the substantial interest in its assets and in the land sued for is in Haygood & Cutts who brought the suit in the name of the corporation that if they have absolute stock control of the corporation and its operation, that by such control they can direct the employment of themselves as counsel, bring suits when they see proper in their own substantial interest and not in the interest of the corporation, that if they advance the cost and make deposits in behalf of the corporation and maintain suits without advances from such corporation, it creates a strong presumption that the use of the name of the corporation as party plaintiff is merely colorable and collusive and that suit or actions brought under such circumstances ought not to be maintained by the court, for the reason that it has no jurisdiction on the ground of true diversity of citizenship Haygood & Cutts and the parties defendant all residing in Georgia, and for the further reason that the court will not lend its assistance to members of the bar who seek in this way to bring and control litigation in its forum.

On June 23rd, 1906 said jury found a verdict against the plaintiff sustaining said plea to the jurisdiction and judgment was thereupon entered dismissing said suit for want of jurisdiction.

As the facts hereinbefore set forth do not appear

123 During the May Term, 1906 of said United States Circuit Court, and before the adjournment of said court, to-wit: on the — day of September, 1906 an order was passed by the Honorable Emory Speer, District Judge who presided in said case, extending the time in which to have settled the bill of exceptions in said case and to perfect the appeal therein until any time during the October term, 1906 of said United States Circuit Court, and thereby plaintiff's right to present and have settled the said bill of exceptions, to perfect its said appeal in all respects was preserved by the said order which order is of file and of record in said case.

And as the facts hereinbefore set forth do not appear on record, comes the plaintiff during the October term, 1906, of said United States Circuit Court and before the adjournment thereof and within the time reserved as allowed by order of the Court in which to tender and have certified its bill of exceptions and tenders this its bill of exceptions, and prays that it be duly certified as by law provided.

124 KING, SPALDING & LITTLE,
Attorneys for Plaintiff.

ALEX. C. KING,
Of Counsel for Plaintiff.

The foregoing bill of exceptions is true, and is hereby so certified to be during the October Term 1906 of said United States Circuit Court, being the term to which the right to tender said bill of exceptions was extended by a proper order of the Court, and within the time allowed by said order and this bill of exceptions and certificate is ordered filed, and hereby made a part of the record in said case.

Note by the Court.

While in the charge to the Jury the Judge presiding spoke of Haygood & Cutts as residents of the District, it was alleged in the plea to the jurisdiction which the Jury found true that they were citizens and inhabitants of the State of Georgia. This was well known to be true by Court and counsel and no issue or exception was made as to that fact.

This January 29, 1907.

EMORY SPEER, *Judge.*

Filed January 29, 1907.

CECIL MORGAN,
Deputy Clerk.

125 *Assignment of Errors.*

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

SOUTHERN REALTY INVESTMENT COMPANY, Plaintiff and Plaintiff in Error,

vs.

NANCY WALKER, Defendant and Defendant in Error.

And now, at the same time that it files its petition for a writ of error, comes the Southern Realty Investment Company by its attorneys and files with said petition this assignment of errors and says that in the record and proceedings in the above entitled matter there is manifest error in this, to-wit:

1. That the court erred in admitting in evidence the record of the action of ejectment pending in the said Circuit Court of the United States for the Western Division of the Southern District of Georgia brought by J. B. Hall to recover the tract of land described in the deed from Mary Ham and S. A. Conner to the Southern Realty Investment Company dated February 10th, 1905, the same being an action of ejectment for said land—the contents of which are immaterial. The introduction of said testimony having been objected to by the plaintiff upon the ground that the same was irrelevant and did not elucidate any issue in said case, and did not show that the title of the said plaintiff to the piece of property involved in the pending case against Mrs. Nancy Walker was collusive or that said suit was one in which the requisite citizenship did not exist to confer jurisdiction on this court; and exception being taken to the ruling of said court admitting said record in evidence.

126 2. Because the court erred in admitting in evidence the deed from Mary Ham and S. A. Conner to the Southern Realty Investment Company dated February 10th, 1905 conveying blocks D and K in the plat of Abbeville Land & Improvement Company situate in the city of Abbeville, Wilcox County, Georgia. The introduction of said testimony being objected to by the plaintiff upon the ground that the same was irrelevant and did not elucidate any issue of said case, and did not show that the title of the said plaintiff to the piece of property involved in the pending case against

Mrs. Nancy Walker was collusive or that said suit was one in which the requisite citizenship did not exist to confer jurisdiction on this court, and exception being taken to the ruling of said court admitting said record in evidence.

3. Because the court erred in admitting in evidence deed from Glory Cohen to the Southern Realty Investment Company date- January 23rd, 1905 conveying to it lots of land in the city of Fitzgerald, Irwin County Georgia, known as lots No. 4 in square 2, Block 16, and No. 26 in Square 13, Block 7. The introduction of said testimony being objected to by the plaintiff upon the ground that the same was irrelevant and did not elucidate any issue of said case, and did not show that the title of the said plaintiff to the piece of property involved in the pending case against Mrs. Nancy Walker was collusive or that said suit was one in which the requisite citizenship did not exist to confer jurisdiction on this court, and exception being taken to the ruling of said court admitting said record in evidence.

4. Because the court erred in admitting in evidence the record of the suit pending in the said Circuit Court of the United States for the Western Division of the Southern District of Georgia brought by the Southern Realty Investment Company against Mrs. Emma Hall to recover a portion of the property in the city of Abbeville, Wilcox County, Georgia, conveyed to the said Southern Realty Investment Company by the said Mary Ham and S. A. Conner. To the introduction of which plaintiff then and there objected upon the ground that the same was irrelevant and did not elucidate any issue in said case and did not show that the title of the said plaintiff to the piece of property involved in the pending cause against Mrs. Nancy
127 Walker was collusive or that the present suit was one in which the requisite citizenship did not exist to confer jurisdiction on this court. To the ruling of the court in admitting said testimony the plaintiff then and there excepted.

5. Because the court erred in admitting *the* evidence the record of a suit pending in the Honorable Circuit Court for the Western Division of the Southern District of Georgia brought by the Southern Realty Improvement Company against Isadore Gelder, being an action of ejectment to recover the property embraced in the deed from Glory Cohen to the Southern Realty Investment Company, to-wit, lots in the city of Fitzgerald, Irwin County, Georgia, known as lot 4 in Square 2, Block 16, and lot No. 26 in Square 13 in Block 7, plaintiff having objected to the introduction of said record upon the ground that the same was irrelevant and did not elucidate any issue in said case and did not *sjow* that the title of the plaintiff to the piece of property involved in the pending cause against Mrs. Nancy Walker was collusive or that the present suit was one in which the requisite citizenship did not exist to confer jurisdiction on this court. To the ruling of the court in admitting said evidence the plaintiff then and there excepted.

6. Because the court erred in refusing to charge the jury as requested in writing by the plaintiff, as follows:

"The sole issue which the jury is trying at the present time is the question of the jurisdiction of the court to maintain this suit as a suit brought by the Southern Realty Investment Company. The court instructs the jury that the evidence adduced shows that the plaintiff is a citizen of South Dakota and the defendant a citizen of Georgia resident in this dictrict and does not show any fact which would authorize the jury to find that said suit is not one which this court is authorized to hear and determine."

7. Because the court erred in refusing to charge the jury as requested in writing by the plaintiff, as follows:

"The evidence in this case with all inferences and deductions which can be legitimately drawn therefrom fails to show that
128 this suit is brought otherwise than for the benefit of the Southern Realty Investment Company or that any person has any interest in any recovery which may be made by it or other than the interest as stockholders which the stockholders of said company have in it and that is not such an interest as will defeat the jurisdiction of this court and the said evidence and inferences and deductions fail to support said plea to the jurisdiction."

8. Because the court erred in refusing to charge the jury as requested in writing by the plaintiff, as follows:

"The jury are instructed that the title to the property sued for is in the Southern Realty Investment Company and that there is no evidence showing that it holds the same under any contract or agreement to convey the same or any interest therein if recovered to any other person or corporation and that if it were the fact that one of the reasons why said title may have been directed to be conveyed to a non-resident corporation may have been to enable such corporation to bring suit in the United States Court, provided the conveyance was a *bona fide* unconditional conveyance this will not render the suit collusive to prevent the plaintiff from maintaining this action."

9. Because the court erred in refusing to charge the jury as requested in writing by the plaintiff, as follows:

"A conveyance made for the purpose of vesting title in a non-resident corporation, if a real transaction intending to vest such title without reservation, will enable such non-resident to maintain a suit for the property so conveyed in the United States Court although one of the motives of such conveyance and an inducment thereto was the ability of such non-resident corporation to sue in such court. Proof of such motive will not defeat the jurisdiction."

129 10. Because the court erred in refusing to charge the jury as requested in writing by the plaintiff, as follows:

"That the stockholders of the plaintiff corporation were all citizens of Georgia or that a great majority or all of its stock was owned by citizens of Georgia or that the stockholders were many or few would not affect the status of the plaintiff as a citizen of South Dakota or defeat its right to sue in this court."

11. Because the court erred in refusing to charge the jury as requested in writing by the plaintiff, as follows:

"If the jury believe that the plaintiff corporation was formed by Messrs. Haygood & Cutts and that they owned practically all of its capital stock, and that said corporation was formed by them to engage in trading in lands in Georgia and that to carry out such purpose the plaintiff corporation acquired title to the land sued for in this case, the fact that Messrs. Haygood & Cutts and the other stockholders are citizens of Georgia and are interested as stockholders in the plaintiff company would not render the plaintiff other than a citizen of South Dakota or defeat the right to sue in this court."

12. Because the court erred in charging the jury as follows:

"You are further instructed, however, that if the organization of the corporation is merely colorable, that the substantial interest in its assets and in the land sued for is in Haygood & Cutts who brought the suit in the name of the corporation that if they have absolute stock control of the corporation and its operation, that by such control they can direct the employment of themselves as counsel, bring suits when they see proper in their own substantial interest and not in the interest of the corporation, that if they advance the cost and make deposits in behalf of the corporation and maintain suits without advances from such corporation, it creates a strong presumption that the use of the name of the corporation as party plaintiff is merely colorable and collusive and that suits or actions brought under such circumstances ought not to be maintained by the court, for the reason that it has not jurisdiction on the ground of true diversity of citizenship, Haygood & Cutts and the parties
130 defendant all residing in Georgia, and for the further reason
that the court will not lend its assistance to members of the bar who seek in this way to bring and control litigation in its forum."

Wherefore, the said Southern Realty Investment Company prays that the said judgment of the said Circuit Court of the United States for the Western Division of the Southern District of Georgia dismissing said case for want of jurisdiction in said court to try the same be reversed and set aside.

HAYGOOD & CUTTS,
KING, SPALDING & LITTLE,
Attorneys for Plaintiff in Error.

ALEX. C. KING,
Of Counsel.

Indorsement: U. S. Circuit Court, Western Division, So. Dist. of Georgia. #10. Southern Realty Investment Company, *vs.* Nancy Walker. Assignment of Errors. Filed January 29, 1907, Cecil Morgan, Deptuy Clerk.

131 *Petition for Writ of Error and Order Thereon.*

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

SOUTHERN REALTY INVESTMENT COMPANY, Plaintiff,
vs.
NANCY WALKER, Defendant.

The above named plaintiff, Southern Realty Investment Company, conceiving that there is manifest error in the judgment rendered on the 23rd day of June, 1906, in the above entitled cause during the May Term, A. D. 1906, thereof, sustaining the plea to the jurisdiction of this Court and dismissing said cause for want of jurisdiction, to the great damage of said Southern Realty Investment Company, comes and prays that a Writ of Error may be allowed in said cause to the Supreme Court of the United States upon the question of jurisdiction raised in said cause upon which alone said judgment was rendered, and that a transcript of the record, proceedings and papers upon which said order was made duly authenticated may be sent to the said United States Supreme Court together with said Writ of Error.

Dec. 10th, 1906.

SOUTHERN REALTY INVESTMENT COMPANY,
By HAYGOOD & CUTLER & KING,
SPALDING & LITTLE,
The Attorneys of Record.

The foregoing Writ of Error is allowed as prayed, and I hereby certify that the said cause was tried alone upon the plea to the jurisdiction of this Court filed in said cause, and the judgment complained of rendered solely on the question of jurisdiction of this Court raised by said plea.

EMORY SPEER, *U. S. Judge.*

January 29th, 1907.

Filed Jan'y 29, 1907.
CECIL MORGAN,
Deptuy Clerk.

132 Indorsement: U. S. Circuit Court, Western Division, So. Dist. of Georgia. #10. Southern Realty Investment Company *vs.* Nancy Walker. Petition for Writ of error and order thereon. Filed Jan'y 29, 1907. Cecil Morgan, Deputy Clerk.

133 *Writ of Error.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Judges of the Circuit Court of the United States for the Southern District of Georgia, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said Circuit Court before you between the Southern Realty Investment Company, plaintiff, and Nancy Walker, defendant, manifest error has happened to the great damage of the said Southern Realty Investment Company as by its complaint appears; we, being willing that error, if any has been, should be duly corrected, and full — speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington on the 1st day of March next in the Supreme Court, to be then and there held that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States the 29th day of January in the year of our Lord One Thousand Nine Hundred and Seven and of the Independence of the United States of America the one hundred thirty first.

T. F. JOHNSON, *Clerk*,
By CECIL MORGAN,
Deputy Clerk.

Indorsement: #10. United States Circuit Court, Western Division, Southern District of Georgia. Southern Realty Investment Co. *vs.* Nancy Walker, Writ of Error. Filed January 29, 1907. Cecil Morgan, Deputy Clerk.

134 *Bond on Appeal, Order Approving.*

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

SOUTHERN REALTY INVESTMENT COMPANY
vs.
NANCY WALKER.

UNITED STATES OF AMERICA,
Southern District of Georgia, County of Irwin:

Know all men by these presents, That we, Southern Realty Investment Company, as Principal, and R. V. Handley as Surety, are hereby — and firmly found unto Nancy Walker in the full sum of One Thousand ($1000.00) Dollars, for the just and true payment of which to the said obligee of this bond, her administrators, executors or assigns, we bind ourselves, our heirs and legal representatives jointly and severally, firmly by these presents.

Signed, sealed and dated this 15th day of August, in the year of Our Lord One Thousand Nine Hundred and Six.

The condition of the above bond is such,—

That whereas in the case first above stated wherein said Southern Realty Investment Company is Plaintiff and Nancy Walker is Defendant, the said Southern Realty Investment Company has prosecuted a Writ of Error to the Supreme Court of the United States to correct errors alleged to exist in the judgment and proceedings in the Circuit Court of the United States for the Western Division of the Southern District of Georgia and to reverse the judgment therein rendered,—

Now, therefore, the condition of the above obligation is such that if the said Southern Realty Investment Company shall prosecute
said Writ of Error to effect, and shall answer all damages and
135 costs, if it fails to make its said plea good, Then, the above
obligation to be void; otherwise, the same shall be and remain
in full force and virtue.

SOUTHERN REALTY INVESTMENT CO., [L. S.]
By J. M. BARENTINE, *President.* [L. S.]
R. V. HANDLEY. [L. S.]

Signed, sealed and delivered in presence of:
DREW W. PAULK,
N. P. & Ex. Off., Irwin Co., Ga.

Approved by:
EMORY SPEER, *Judge.*

136 UNITED STATES OF AMERICA,
Southern District of Georgia, Irwin County:

Personally before the undersigned officer, came R. V. Handley the Security in the foregoing bond, who on oath says that he is worth the amount of said bond, over and above all of his debts, liabilities and exemptions allowed by law, and owns real estate in the State of Georgia of the value of said bond over and above all of his debts, liabilities and exemptions aforesaid.

R. V. HANDLEY.

Sworn to and subscribed before me this 16, day of August, 1906.
[L. S.] DREW W. PAULK,
N. P. & Ex. Off., Irwin County, Ga.

Indorsement: U. S. Circuit Court, Western Division, So. Dist. of Georgia. #10. Southern Realty Investment Company *vs.* Nancy Walker. Bond on Appeal. Order Approving. Filed Jan'y 29, 1907, Cecil Morgan, Deputy Clerk.

137 *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Nancy Walker, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States of America at the City of Washington, District of Columbia, within thirty days from the date hereof, pursuant to a Writ of Error filed in the Clerk's office of the Circuit Court of the United States for the Western Division of the Southern District of Georgia, wherein Southern Realty Investment Company is the Plaintiff in Error and you are the Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error as in the Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 29th day of January in the year of Our Lord one thousand, nine hundred and seven.

EMORY SPEER,
U. S. Judge.

Due and legal service acknowledged this January 30th, 1907.

HALL & WIMBERLY,
HAL LAWSON,
Attorneys for Nancy Walker.

Filed Jany. 30, 1907.

CECIL MORGAN,
Deputy Clerk.

Indorsement: U. S. Circuit Court, Western Division, So. Dist. of Georgia. No. 10. Southern Realty & Investment Company *vs.* Nancy Walker. Citation on Appeal. Filed Jany. 29, 1907. Cecil Morgan, Deputy Clerk.

138 UNITED STATES OF AMERICA, *Southern District of Georgia:*

I, Tomlinson F. Johnson, Clerk of the Circuit Court of the United States for the Southern District of Georgia, at Macon, do hereby certify that the foregoing one hundred and thirty eight pages contain a true and correct copy of the record, bill of exceptions, assignment of errors, and all other proceedings in the cause lately pending in said Court, numbered 368, on the law docket of said Court, entitled The Southern Realty Investment Company *vs.* Nancy Walker, as the same now appears of record in my office.

In witness whereof, I have hereunto set my hand, and affixed the seal of the said Court, at Macon, in said District, on the 25th day of February, A. D. 1907.

[Seal U. S. Circuit Court, So. Dist. of Georgia, West'n Div.]

TOMLINSON F. JOHNSON,
Clerk U. S. Circuit Court for the Southern District of Georgia,
By CECIL MORGAN,
Deputy Clerk.

139 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Nancy Walker, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States of America at the City of Washington, District of Columbia, within thirty days from the date hereof, pursuant to a Writ of Error filed in the Clerk's office of the Circuit Court of the United States for the Western Division of the Southern District of Georgia, wherein Southern Realty Investment Company is the Plaintiff in Error and you are the Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error as in the Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 29th day of January, in the year of Our Lord one thousand, nine hundred and seven.

EMORY SPEER,
U. S. Judge.

Ent. I. 353.

Due and legal service acknowledged this January 30th, 1907.

HALL & WIMBERLY,
HAL LAWSON,
Attorneys for Nancy Walker.

Filed Jany. 30, 1907.
CECIL MORGAN,
Deputy Clerk.

140 [Endorsed:] U. S. Circuit Court, Western Division, So. Dist. of Georgia. # 10. Southern Realty & Investment Company *vs.* Nancy Walker. Citation on Appeal. Filed Jany. 29, 1907. Cecil Morgan, Deputy Clerk.

Endorsed on cover: File No. 20,618. S. Georgia C. C. U. S. Term No. 258. Southern Realty Investment Company, plaintiff in error, *vs.* Nancy Walker. Filed March 15th, 1907. File No. 20,618.

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 258.

SOUTHERN REALTY INVESTMENT COMPANY, Plaintiff in Error. vs. NANCY WALKER, Defendant in Error.	In Error from the United States Circuit Court for the Southern District of Georgia, Western Division.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

On April 14, 1905, the Southern Realty Investment Company, a corporation created under the laws of South Dakota and a citizen thereof, commenced its action of ejectment, in the United States Circuit Court for the Southern District of Georgia, Western Division, against Nancy Walker, a citizen of Georgia, resident in said District, to recover original land lot number 207 in the Third District of Wilcox County, Georgia, (in said Southern District and Western Division). Said suit was in the common law form in the name of John Doe on the demise of said Southern Realty Investment Company against Richard Roe, casual ejector, and Nancy Walker as tenant in possession. (Transcript pp. 1, 14.)

The defendant, Nancy Walker, filed in said case a plea to the jurisdiction of the Court alleging that its jurisdiction to entertain such suit was predicated on diversity of citizenship of the parties; that Southern Realty Investment Company was alleged to be a citizen of South Dakota, and Nancy Walker a citizen of Georgia, whereas she alleged that the said corporation really instituted and is prosecuting said suit for the use and benefit of the heirs at law of D. H. Pope, to-wit, John D. Pope and others whose names are unknown to defendant, and John W. Haygood and Eldridge Cutts, citizens of Georgia, who defendant avers are the real and substantial plaintiffs. That the plaintiff corporation was incorporated and organized for the purpose of instituting and prosecuting suits in the United States Court not really involving a dispute or controversy within the jurisdiction of such Court; that the business contemplated for its organization and inception and the real business carried on by it has been the bringing of such suits. That the corporation is really comprised of said John W. Haygood and Eldridge Cutts, attorneys at law, largely engaged in the business of suits to recover lands. That to confer jurisdiction on the Courts of the United States of suits in which real plaintiffs were citizens of the same State with defendants, said Haygood and Cutts, and with John M. Barentine, Thomas M. Parsons, Phillip Lawrence and Marion Hoke created this corporation under the laws of South Dakota for the purpose of securing contracts from persons desiring their services as attorneys at law in bringing suits in the United States Courts and in order to confer jurisdiction of such suits on said Courts. That said heirs at law of D. H. Pope employed said Haygood and Cutts to bring this suit under a contract nominally with the Southern Realty Investment Company by which in reality the said heirs of Pope employed Haygood & Cutts for a share in the land to bring suit to recover the same, all costs and expenses to be paid by Haygood & Cutts; that to enable the suit to be brought in the United States Court the title was conveyed by heirs of Pope to said corporation, but that the real owners remained the heirs of said Pope and said Haygood & Cutts, and that the transaction was a scheme and device to confer jurisdiction on the Court of a case not properly in its jurisdiction, and was a fraud on the Court and on the defendant. (Transcript pp. 11, 12.)

The case came on to be heard on the issue raised alone on the plea to the jursidiction. (Transcript pp. 15, 79.)

The evidence made the following case:

The Southern Realty Investment Company was chartered and organized under the laws of South Dakota on December 5, 1904. (Transcript pp. 15, 18.)

The stock was $5,000.00, owned as follows: J. W. Haygood $2,200.00, Eldridge Cutts $2,300.00, J. M. Barentine, T. M. Parsons, R. L. Ivy, Philip Lawrence and Marion Hoke one share each. (Transcript p. 19.)

The charter was obtained at the request of Messrs. Haygood & Cutts by Philip Lawrence. (Transcript pp. 68, 69.)

The capital stock was paid up by the conveyance to the Company of the following pieces of real estate at the following valuations:

Land Lot 218, Third District of Wilcox County, Georgia, for	$1,500.00
Twenty acres of the American Tribune Soldier Colony Company domain (Wilcox County)	150.00
One-half interest in Land Lot 121 in the Seventh District of Wilcox County	1,500.00
Remainder subscribed for by Messrs. Haygood & Cutts to be paid in as called for by the Directors	1,850.00
	$5,000.00

(Transcript pp. 40, 41.)

This stock was paid for by subsequent purchases of land paid for by J. W. Haygood and Eldridge Cutts. (Transcript pp. 35, 42, 43.)

The land owned by the Company and conveyed to it was: Land Lot 218, Third District Wilcox County, Georgia, 480 acres; Land Lot 70, Seventh District Worth County, Georgia, 341 acres; twenty acres in American Tribune Soldier Colony Company tract near Fitzgerald, Georgia—in all, 841 acres, not in litigation or dispute. (Transcript p. 53.)

The other lands owned by it are:

Land Lot 207 in the Third District of Wilcox County, containing 490 acres, being the land sued for in this case. (Transcript p. 21.)

Blocks D and K in the plat of the Abbeville Land and Improvement Company, containing seven acres, situated in the City of Abbeville, Wilcox County, Georgia, for which suit is pending in said United States Circuit Court. (Transcript pp. 30, 31.)

City Lot 4 in Square 2, Block 16, and City Lot 26 in Square 13, Block 7, in the City of Fitzgerald, Irwin County, Georgia. (Transcript p. 33.)

A suit for one of these lots was brought in said United States Circuit Court and for the other in the State Court. (Transcript pp. 52, 53.)

The defendant introduced in evidence the title deeds of plaintiff and petitions showing the pieces of property sued for by plaintiff in the United States Court. Plaintiff objected to the introduction of the evidence of title to these lots in suit other than the lot involved in the present suit; also to the introduction in evidence of the records of the suits concerning such other lots, objecting to each piece of said testimony as irrelevant to, and not elucidating, the issues in the case against Mrs. Nancy Walker. The Court overruled each objection, and plaintiff then and there excepted. (Transcript pp. 31-34.)

The title to none of these pieces of property ever were in Messrs. Haygood & Cutts, but all proceeded by regular deeds (in this record) from the former owner to the Southern Realty Investment Company. (Transcript pp. 20, 21, 31, 33.)

There was no interest retained by these vendors, either in the lands sold or the proceeds, nor were they interested in the Southern Realty Investment Company. (Transcript pp. 50, 51, 64.)

As to the lot in question in this case it is stipulated in this record that the plaintiff corporation has a prima facie title to the land sufficient to put defendant to proof of a better title. (Transcript p. 67.)

As to the proof concerning the title to the lot in dispute it was proven that the title was originally in the heirs of D. H. Pope, who conveyed it absolutely to one J. M. Barentine. (Transcript p. 20.)

This conveyance was for a cash consideration which was paid to the Popes, and they never had any further interest therein or in any suit therefor.

This land was conveyed to Barentine only that he might convey to the plaintiff corporation. He never had any beneficial interest therein. (Transcript pp. 21, 22.)

The reasons for the incorporation of this Company were that J. W. Haygood and Eldridge Cutts were joint owners of some land in Georgia. They were attorneys at law. They determined that it was better to form a corporation for the purpose of such land business as they might wish to embark in. They desired to not own the lands personally, to have only ownership of the stock of a corporation which, among other things, would avoid all questions of death or survivorship, warranties of title and be best for legitimate business reasons. (Transcript pp. 46, 47, 65.)

The purpose of getting jurisdiction in the Federal Court was not discussed. (Transcript p. 65.)

The laws of several States were discussed. (Transcript p. 45.) And finally they selected this means as the most economical and expeditious. (Transcript pp. 47, 57.)

All purpose to create a collusive jurisdiction for the

United States Court was most positively denied. (Transcript pp. 45, 47, 63.)

At the conclusion of the testimony the plaintiff requested the Court to charge the jury:

1st. That the evidence showed that plaintiff was a citizen of South Dakota and the defendant a citizen of Georgia, resident in the District, and showed no fact authorizing the jury to find in favor of the plea to the jurisdiction.

2nd. That the evidence and all legitimate inferences and deductions therefrom failed to show that the suit was brought otherwise than for the benefit of the plaintiff corporation, or that any other person had any interest in the recovery which would defeat the jurisdiction.

3rd. That the title to the property sued for was in the plaintiff corporation and there was no evidence showing that it held the same under any contract or agreement to convey it or any interest therein to any one else and if it was true that one reason why such title was conveyed to it, was to enable it to sue in the United States Court, that would not render the suit collusive or defeat a recovery if the conveyance was **bona fide** and unconditional

4th. That a conveyance, made to vest title in a non-resident corporation, if a real transaction, vesting title without reservation, will enable such non-resident to maintain suit for the property so conveyed in the United States Court although one of the motives of such conveyance and an inducement thereto was the ability of such corporation to sue in such Court.

5th. That the stockholders were all citizens of Georgia, or that a great majority of the stock was owned by such citizens, or that the stockholders were many or few, would not affect the status of plaintiff as a citizen of South Dakota or defeat its right to sue in this Court.

6th. If the jury believe that the plaintiff corporation was formed by Haygood & Cutts, and that they owned practically all of the stock, and that said corporation was

formed to trade in lands in Georgia, and that to carry out such purpose the plaintiff acquired title to the land sued for, the fact that Haygood & Cutts and the other stockholders are citizens of Georgia and are interested as stockholders in the plaintiff Company, would not render the plaintiff other than a citizen of South Dakota or defeat its right to sue in this Court. (Transcript pp. 71, 72.)

The Court declined to give any one of said requests. (Transcript p. 72.)

The Court charged the jury that the issue was on the plea to the jurisdiction. That the action is in the name of the Southern Realty Investment Company as plaintiff, which is alleged to be a corporation and a citizen of South Dakota; that the plea challenges the genuineness of this corporation in so far as it may have the right to bring a suit against citizens of Georiga to recover lands in Georgia.

That it appeared that the corporation was designed and formed by Haygood & Cutts, both of whom are counsel for the plaintiff, and who control forty-five of the fifty shares of the capital stock of the corporation; that they have brought this and two other suits in the corporate name for its ostensible benefit.

That if the organization of this South Dakota corporation was made in good faith to invest and deal in lands in Georgia, it would have the right to bring a suit or action in appropriate cases in the United States Court in order to protect the title or interest which it may have acquired.

That if the organization of the corporation is merely colorable, that the substantial interest in the assets and in the land sued for is in Haygood & Cutts, who brought the suit in the name of the corporation, that if they have absolute stock control of the corporation and its operation, that by such control they can direct the employment of themselves as counsel, bring suits when they see proper in their own substantial interest and not in the interest of the corporation, that if they advance the cost and make deposits in behalf of the corporation and maintain suits without such advances from the corporation, it creates a strong presumption that the use of the name of the corporation as party plaintiff is merely colorable and collusive, and that suits or actions brought under such circumstances ought not to be maintained by the Court for the reason that it has no jurisdiction on the ground of true diversity of citizenship, Haygood & Cutts and the parties defending all residing in Georgia, and for the further reason that the Court will not lend its assistance to members of the bar who seek in this way to bring and control litigation in its forum.

That this presumption could be rebutted by proof. That the burden was on the defendant to show by a preponderance of proof that the Court was without jurisdiction, before the jury could find the plea good.

That the jury should consider the evidence in its entirety and determine whether this corporation was formed for the legitimate real estate business or to enable two attorneys to control it, to acquire professional business involving land titles and bring the same in the United States Court because of the State in which in the absence of such corporation the jurisdiction would reside. (Transcript pp. 72, 73.)

The plaintiff in the presence of the jury and before they retired excepted to the refusal of the Court to give each and every one of the charges requested, and also to the giving of so much of the foregoing charge as is set forth in the twelfth assignment of error. (Transcript pp. 72, 73, 78.)

The jury found in favor of the plea and that the Court was without jurisdiction, and judgment was accordingly entered dismissing said plea. (Transcript p. 74.)

The plaintiff thereupon petitioned for its writ of error to the Supreme Court of the United States upon the question of jurisdiction, which is also certified by the Judge to be the sole question involved. (Transcript p. 79.)

ASSIGNMENT OF ERRORS.

The errors assigned are as follows:

1. That the Court erred in admitting in evidence the record of the action of ejectment pending in said Circuit Court of the United States for the Western Division of the Southern District of Georgia brought by J. B. Hall to recover the tract of land described in the deed from Mary Ham and S. A. Connor to the Southern Realty Investment Company, dated February 10, 1905, the same being an action of ejectment for said land—the contents of which are immaterial. The introduction of said testimony having been objected to by the plaintiff upon the ground that the same was irrelevant and did not elucidate any issue in said case, and did not show that the title of the said plaintiff to the piece of property involved in the pending case against Mrs. Nancy Walker was collusive or that said suit was one in which the requisite citizenship did not exist to confer jurisdiction on this Court; and exception being taken to the ruling by said Court admitting said record in evidence.

2. Because the Court erred in admitting in evidence the deed from Mary Ham and S. A. Connor to the Southern Realty Investment Company dated February 10, 1905, conveying blocks D and K in the plat of Abbeville Land and Improvement Company, situate in the City of Abbeville, Wilcox County, Georgia. The introduction of said testimony being objected to by the plaintiff upon the ground that the same was irrelevant and did not elucidate any issue of said case, and did not show that the title of the said plaintiff to the piece of property involved in the pending case against Mrs. Nancy Walker was collusive or that said suit was one in which the requisite citizenship did not exist to confer jurisdiction on this Court, and exception being taken to the ruling of said Court admitting said record in evidence.

3. Because the Court erred in admitting in evidence deed from Glory Cohen to the Southern Realty Investment Company dated January 23, 1905, conveying to it

lots of land in the City of Fitzgerald, Irwin County, Georgia, known as Lots No. 4, in Square 2, Block 16, and No. 26, in Square 13, Block 7. The introduction of said testimony being objected to by the plaintiff upon the ground that the same was irrelevant and did not elucidate any issue of said case, and did not show that the title of the said plaintiff to the piece of property involved in the pending case against Mrs. Nancy Walker was collusive or that said suit was one in which the requisite citizenship did not exist to confer jurisdiction on this Court, and exception being taken to the ruling of said Court admitting said record in evidence.

4. Because the Court erred in admitting in evidence the record of the suit pending in the said Circuit Court of the United States for the Western Division of the Southern District of Georgia brought by the Southern Realty Investment Company against Mrs. Emma Hall to recover a portion of the property in the City of Abbeville, Wilcox County, Georgia, conveyed to the said Southern Realty Investment Company by the said Mary Ham and S. A. Connor. To the introduction of which plaintiff then and there objected upon the ground that the same was irrelevant and did not elucidate any issue in said case and did not show that the title of the said plaintiff to the piece of property involved in the pending cause against Mrs. Nancy Walker was collusive or that the present suit was one in which the requisite citizenship did not exist to confer jurisdiction on this Court. To the ruling of the Court in admitting said testimony the plaintiff then and there excepted.

5. Because the Court erred in admitting in evidence the record of a suit pending in the Honorable Circuit Court for the Western Division of the Southern District of Georgia brought by the Southern Realty Improvement Company against Isadore Gelder, being an action of ejectment to recover the property embraced in the deed from Glory Cohen to the Southern Realty Investment Company, to-wit: Lots in the City of Fitzgerald, Irwin County, Georgia, known as Lot 4, in Square 2,

Block 16, and Lot No. 26, in Square 13, in Block 7, plaintiff having objected to the introduction of said record upon the ground that the same was irrelevant and did not elucidate any issue in said case, and did not show that the title of the plaintiff to the piece of property involved in the pending cause against Mrs. Nancy Walker was collusive or that the present suit was one in which the requisite citizenship did not exist to confer jurisdiction on this Court. To the ruling of the Court in admitting said evidence the plaintiff then and there excepted.

6. Because the Court erred in refusing to charge the jury, as requested in writing by the plaintiff, as follows:

> "The sole issue which the jury is trying at the present time is the question of the jurisdiction of the Court to maintain this suit as a suit brought by the Southern Realty Investment Company. The Court instructs the jury that the evidence adduced shows that the plaintiff is a citizen of South Dakota and the defendant is a citizen of Georgia, resident in this District, and does not show any fact which would authorize the jury to find that said suit is not one which this Court is authorized to hear and determine."

7. Because the Court erred in refusing to charge the jury, as requested in writing by the plaintiff, as follows:

> "The evidence in this case with all inferences and deductions which can legitimately be drawn therefrom fails to show that this suit is brought otherwise than for the benefit of the Southern Realty Investment Company, or that any person has any interest in any recovery which may be made by it other than the interest as stockholders, which the stockholders of said company have in it, and that is not such an interest as will defeat the jurisdiction of this Court, and the said evidence and inferences and deductions fail to support said plea to the jurisdiction."

8. Because the Court erred in refusing to charge the jury, as requested in writing by the plaintiff, as follows:

> "The jury is instructed that the title to the property sued for is in the Southern Realty Investment Company, and that there is no evidence showing that it holds the same under any contract or agreement to convey the same or any interest therein if recovered, to any other person or corporation, and that if it were the fact that one of the reasons why said title may have been directed to be conveyed to a non-resident corporation may have been to enable such corporation to bring suit in the United States Court, provided the conveyance was a bona fide unconditional conveyance, this will not render the suit collusive or prevent the plaintiff from maintaining this action."

9. Because the Court erred in refusing to charge the jury, as requested in writing by the plaintiff, as follows:

> "A conveyance made for the purpose of vesting title in a non-resident corporation, if a real transaction intending to vest such title without reservation, will enable such non-resident to maintain a suit for the property so conveyed in the United States Court, although one of the motives of such conveyance and an inducement thereto was the ability of such non-resident corporation to sue in such court. Proof of such motive will not defeat the jurisdiction."

10. Because the Court erred in refusing to charge the jury, as requested in writing by the plaintiff, as follows:

> "That the stockholders of the plaintiff corporation were all citizens of Georgia or that a great majority or all of its stock was owned by citizens of Georgia, or that the stockholders were many or few, would not affect the status of the plaintiff as a citizen of South Dakota or defeat its right to sue in this Court."

11. Because the Court erred in refusing to charge the jury, as requested in writing by the plaintiff, as follows:

> "If the jury believe the plaintiff corporation was formed by Messrs. Haygood & Cutts, and that they owned practically all of its capital stock, and that said corporation was formed by them to engage in trading in lands in Georgia, and that to carry out such purpose the plaintiff corporation acquired title to the land sued for in this case, the fact that Messrs. Haygood & Cutts and the other stockholders are citizens of Georgia and are interested as stockholders in the plaintiff company, would not render the plaintiff other than a citizen of South Dakota or defeat the right to sue in this Court."

12. Because the Court erred in charging the jury as follows:

> "You are further instructed, however, that if the organization of the corporation is merely colorable, that the substantial interest in its assets and in the land sued for is in Haygood & Cutts, who brought the suit in the name of the corporation, that if they have absolute stock control of the corporation and its operation, that by such control they can direct the employment of themselves as counsel, bring suits when they see proper in their own substantial interest and not in the interest of the corporation, that if they advance the cost and make deposits in behalf of the corporation and maintain suits without advances from such corporation, it creates a strong presumption that the use of the name of the corporation as party plaintiff is merely colorable and collusive, and that suits or actions brought under such circumstances ought not to be maintained by the Court, for the reason that it has not jurisdiction on the ground of true diversity of citizenship, Haygood & Cutts and the parties defendant all residing in Georgia, and for the further reason that the Court will not lend its assistance to members of the bar who seek in this way to bring and control litigation in its forum."

BRIEF OF ARGUMENT.

I.

The verdict in favor of the plea to the jurisdiction was contrary to the evidence. The plea to the jurisdiction was proven to be untrue beyond controversy.

The plea to the jurisdiction admitted that the Southern Realty Investment Company was a corporation created under the laws of South Dakota, but alleged it had "in truth and in fact instituted and is prosecuting this suit in the Circuit Court of the United States for the use and benefit of the heirs of D. H. Pope * * * and * * * of John W. Haygood and Eldridge Cutts, citizens and inhabitants of the State of Georgia, whom this defendant avers to be the real and substantial plaintiffs in this suit." * * * "That the said heirs of D. H. Pope * * * employed the said John W. Haygood and Eldridge Cutts to bring the aforesaid suit against this defendant under a contract nominally and ostensibly with the said Southern Realty Investment Company, which contract this defendant had not seen, but the purpose and effect of which is to invest in the said John W. Haygood and Eldridge Cutts, operating in the name of the Southern Realty Investment Company, a share of the recovery in consideration of their services as attorneys and in consideration of their paying the costs of court and the expenses of the litigation, and that the transfer by the said heirs at law of the said D. H. Pope, to-wit, John D. Pope and others whose names are unknown to this defendant, of their alleged title and claim for the lands sued for to the said Southern Realty Investment Company was made as a part of said arrangement with the view and for the purpose of instituting and prosecuting this suit in the United States Circuit Court and of conferring apparent jurisdiction on this Court of a controversy not properly cognizable therein, all of which the said defendant is ready to verify."

This plea is founded on the claim that this corporation was merely holding this property for the Popes, the former owners, who had made a contract giving an interest therein to Haygood & Cutts for recovering the same, and that the corporation was really not the owner.

The proof showed without question or even suggestion to the contrary, that the Popes sold the property for a cash price. (Transcript pp. 20, 50.) They had thereafter no interest in the land or its value.

Barentine conveyed this property to the Southern Realty Investment Company absolutely in fee simple. It does not hold it or any interest in it or the proceeds for him. (Transcript p. 50.) No proof of any sort was offered showing that any contract was ever made by the Popes or Barentine whereby Haygood & Cutts acquired any interest in the land, or that the ownership of the Realty Company was other than absolute or affected with any trust for any one.

Therefore the plea which was filed was wholly disproved, and the Court erred in not directing the jury that the proof required a verdict for the plaintiff and against the plea.

II.

The allegation that the plaintiff was incorporated solely for the business of bringing suits for land was disproved by the facts.

This corporation owned in fee simple:

Lot 218, Third District Wilcox County, Ga.	418 acres
Lot 70, Seventh District Worth County, Ga.	341 acres
Subdivision of Colony Tract, Fitzgerald, Ga.	20 acres
A total of	841 acres

As to this property the plaintiff in error has not, and never has had, any litigation. (Transcript p. 53.)

It owns, besides this,

Lot No. 207, Third District Wilcox County, Georgia, being the lot involved in the present suit, contining 490 acres.

Two town lots in Fitzgerald, Irwin County, bought of Glory Cohen. (Transcript p. 33.)

Blocks D and N, in Abbeville, Georgia, aggregating seven acres. (Transcript p. 31.)

As to the great bulk of its property the Company never had been and was not in litigation.

Outside of the case at bar, the Company had three cases pending—two in the United States Circuit Court (Transcript pp. 30, 34), and one in the Superior Court of Irwin County, Georgia. (Transcript pp. 52.)

Of the above two cases brought in the United States Court, the title to the property involved was conveyed by Mrs. Glory Cohen, of the County of Montgomery, State of Alabama, (Transcript p. 33), who could have maintained a suit for it in the United States Court equally as well as could the Southern Realty Investment Company, she being of diverse citizenship from Isadore Gelder, the defendant in that case.

III.

This property, as well as every other parcel, was conveyed absolutely for a cash consideration to the Plaintiff in Error. It holds it on no trust, express or implied, to convey it to any former owner or to any one else. No former owner has any interest in any of said property or its proceeds.

No one has any interest in said property except the Southern Realty Investment Company, and those with whom it is litigating adversely.

It cannot, therefore, be successfully contended that this property was **colorably** conveyed to the Southern Realty Company to enable a former owner to bring suit in the Federal Court.

IV.

The purchase of property in known adverse possession is expressly permitted by the Statute law of Georgia. The Statute, 32 Henry VIII. C. 9, on this subject, which had been previously held to be of force in Georgia (32 Ga. 188) was repealed by the Georgia Legislature in 1859 by an Act entitled, "An Act to declare the law in regard to deeds to land made during adverse possession," which enacted,

> "That from and after the passage of this Act no deed to lands, hereafter to be made, shall be withheld from the jury or be held to be null and void by any Court of this State, in consequence of the existence of adverse possession of the lands by said deed conveyed at the time of making such deed; any law, usage or custom to the contrary, notwithstanding."

Georgia Acts of 1859, p. 24.

This Act is now embraced in the Civil Code of Georgia of 1895, Section 3605 as follows:

> "A deed to lands, made while the same are held adversely to the maker of the deed, is not void."

See also for the present law of Georgia.

Tucker vs. McArthur, 103 Ga. 409, 416.

The purchases made by the Southern Realty Investment Company of such parts of its property as were in adverse possession were free from taint or illegality.

V.

A corporation is for the purposes of jurisdiction in the United States Courts conclusively presumed to be composed of citizens of the State of its creation.

> "It must be regarded, to begin with, as finally settled, by repeated decisions of this Court, that for the purpose of jurisdiction in the Federal Courts, a state corporation is deemed to be undisputably composed of citizens of such state."

St. Louis & San Francisco Rwy. Co. vs. James, 161 U. S. 545, 554.

This case is approved by this Court in a later decision delivered by Mr. Justice Peckham, in which he says:

> "A recent statement of the law on that subject is contained in the case of **St. Louis & San Francisco Railway Company vs. James, 161 U. S. 545.** It was said by Mr. Justice Shiras in delivering the opinion of the Court in that case, that after considerable contention in the Courts, it was finally determined by this Court that the citizenship of a corporation was that of the State originally creating it and that it was a presumption of law that the members of the corporation were citizens of the same state."

Southern Rwy. vs. Allison, 190 U. S. 326, 332.

The case of Railway vs. James reviews the principal cases on this subject previously decided, and quotes with approval from the case of **Drawbridge Co. vs. Shepherd,** 20 How. 227, 233, as follows:

> "But in the case of the **Louisville Railroad Company vs. Letson** the Court over-ruled as much of this opinion (5 Cranch 57, 61) as authorized a corporation to plead in abatement that one or more of the corporators, plaintiffs or defendants, were citizens of a different State from the one described, and held that the members of the corporate body must be presumed to be citizens of the State in which the corporation was domiciled, and that both

> parties were estopped from denying it. And that inasmuch as the corporators were not parties to the suit in their individual characters, but merely as members and component parts of the body or legal entity which the charter created, the members who composed it ought to be presumed so far as its contracts and liabilities were concerned, to reside where the domicile of the body was fixed by law, and where alone they could act as one person; and to the same extent and for the same purposes, to be also regarded as citizens of the State from which this legal being derived its existence and its faculties and powers."

Railway vs. James, 161 U. S. 545, 557.

In the Letson case a corporation is stated,

> "To be a person, though an artificial one, inhabiting and belonging to that State (of its creation) and therefore entitled for the purpose of suing and being sued, to be deemed a citizen of that State."

Louisville, &c., Railroad Co. vs. Letson, 2 How. 497, 555.

Sustaining these positions see further—

National S. S. Co. vs. Tugman, 106 U. S. 118.
Board of Supervisors vs. Cowles, 7 Wall 118.
Marshall vs. B. & O. R. R. Co., 16 How. 314.
Insurance Co. vs. Francis, 11 Wall 210.
Ex parte Schollenbarger, 96 U. S. 377.

A corporation is an inhabitant and resident alone of the State where incorporated, regardless of where it is doing business or has its usual place of business.

Shaw vs. Quincy Min. Co., 145 U. S. 444, 446.

VI.

Defendant in Error relies upon the case of Lehigh

Mining and Manufacturing Company vs. Kelly as sustaining the position that the verdict in this case is right. A sufficient reply would be that the verdict in this case is one sustaining a particular plea to the jurisdiction, to-wit, that this corporation held this property in trust for the Popes, who had employed Haygood & Cutts to recover the same for them on a certain interest therein; that the corporation itself had no interest in the property, but held it for other persons who were citizens of Georgia.

There is no pretense but that this averment was not only not proved, but wholly disproved, and that the plea must therefore necessarily fail. The present effort is to shift this issue and sustain the plea upon the ground that the corporation was chartered entirely in the inerests of citizens of Georgia in order to enable suits to be brought in the Federal Courts. There is no averment or proof that there was any agreement or understanding that the corporation was not a permanent institution, or that the titles made to it were otherwise than absolute. There is no pretense that the corporation was under any trust, express or implied, to convey the property to any one, nor is there any proof that it would not continue to hold the property, and to enjoy and manage the same, as a corporation just as fully as if its stockholders were all citizens of States other than Georgia.

Properly understood, the case last above mentioned sustains the right of the Southern Realty Investment Company to bring this suit in the Federal Court, and does not sustain the contention of the Defendant in Error. In that case the lands in question were owned by the Virginia Coal and Iron Company, a corporation of Virginia, and had been so owned for years. The Lehigh Mining and Manufacturing Company was organized under the laws of Pennsylvania, exclusively by the individual stockholders and officers of the Virginia Company, and to it the lands of the Virginia Company were conveyed. An agreed statement of facts was made in which it was agreed that the purpose of organizing the last named company and making the conveyance was to give the United States Court jurisdiction in this case. The stockholders of the two corporations were identical. The Court say:

> "It is to be taken * * * that the conveyance was made without any valuable consideration. * * * The Plaintiff in Error stipulates that all that was done had for its sole object to create a case cognizable in the Federal Court, which would otherwise have been cognizable only in a court of Virginia."

And they therefore held:

> "The arrangement by which, without any valuable consideration, the stockholders of the Virginia corporation organized the Pennsylvania corporation and conveyed these lands to the new corporation for the express purpose—and no other purpose is stated or suggested—of creating a case for the Federal Court, must be regarded as a mere device to give jurisdiction to a court of the United States and as being, in law, a fraud upon that court as well as a wrong to the defendants."

Lehigh Mining and Manufacturing Company vs. Kelly, 160 U. S. 327, 339.

This is a very different case from the case at bar, even if the facts in this case showed Haygood & Cutts to be the sole stockholders of this corporation, which they do not.

In the Lehigh Mining and Manufacturing Co. case the individuals were already incorporated, they possessed every advantage of incorporation under their Virginia charter which they could possess under the Pennsylvania charter. They did not even add to themselves corporate faculty by taking out the Pennsylvania charter, and to close all doors to doubt they expressly stipulated that the sole purpose of their incorporation in Pennsylvania was to bring a suit for the land in question in the Federal Court. It is hard to conceive a more extreme case than the case last cited, and yet, even in that case a vigorous dissent was made. The Court unanimously, in both majority and minority opinion, adhered to the doctrine that the right of a party to invoke the jurisdiction of the United States Court

> "cannot be affected or impaired merely because of a motive that induced his grantor to convey or his vendor to sell and deliver the property, provided such conveyance or such sale and delivery was a real transaction by which the title passed, without the grantor or vendor reserving or having any right or power to compel or require a reconveyance or return to him of the property in question."

Lehigh Mining and Manufacturing Company vs. Kelly, 160 U. S. 327, 336.

As fully sustaining this last position, see—

Maxwell vs. Levy, 4 Dallas, 330.
McDonald vs. Smalley, 1 Pet. 620.
Barney vs. Baltimore City, 6 Wall, 280.

It will be noted in the case at bar that the title to the property in question in this case never was in Haygood & Cutts; it was originally in the Popes, then in Barentine, and then in the corporation. None of these parties have the slightest power to compel a reconveyance, nor have they any interest whatever in the property or its proceeds. As to this there is no dispute. It is also equally without dispute that there is no agreement of any sort by which any conveyance is to be made to Haygood & Cutts, or that they are to have any interest except the interest which the stockholders have in a corporation in which they own stock.

This case is analogous to the case of **Irvine Co. vs. Bond**. There Irvine owned a large tract of land in California. He organized a corporation under the laws of West Virginia, of which he owned all the stock except five shares, one of which he caused to be issued to his attorney, one to his wife, and three to three employees, in order to qualify them as directors. He then conveyed the property to the corporation. His purpose was to operate and develop the property through the corporation and without endangering other property owned by him; to secure through it the right of eminent domain, and also to enable him to litigate the title to the property, which was threatened with attack, in the Federal Courts. There was no evidence whatever of any scheme to reconvey the property to Irvine, or that there was any such intention, but, on the contrary, the intention was that the title should remain in the corporation. The Court held:

> "Being real, and intended for what it purported to be, a conveyance of the title of the property to the corporation, the power over which was thereafter vested in a board of directors, and no reconveyance to James Irvine being contemplated, the plea must be overruled."

Irvine vs. Bond, 74 Fed. 849, 854.

The following case fully sustains the position of Plaintiff in Error. DeWitt & Flato, a partnership, owned certain lands in Texas. They took out articles of incorporation under the laws of the State of Missouri, organizing a company for one thousand shares of stock of one hundred dollars each, of which five hundred and forty-four shares were assigned to DeWitt, four hundred and fifty-two shares to Flato and the other four shares to four named persons for the consideration of legal services. The stock was paid for by a transfer of certain lands belonging to DeWitt and Flato, to-wit, a cattle ranch, and this constituted the sole assets of the Company, which assumed all of the liabilities of DeWitt and Flato. Suit was brought by this corporation against one Slaughter, a citizen of Texas, to restrain him from trespassing upon plaintiff's land. A plea to the jurisdiction was filed urging that the complainant corporation was organized and the property involved transferred to it for the sole purpose of giving the United States Court jurisdiction, which it otherwise would not have had, as DeWitt and Flato, because of the citizenship of DeWitt, could not have brought the suit in the United States Court. The partners testified that such was not the object, but that they desired to incorporate for other purposes, stating them. The Court held that the transfer was in good faith and for a valid consideration, and passed the full title to the corporation for all lawful purposes. Continuing, the Court says:

> "The appellant relies upon Lehigh Mining and Manufacturing Company vs. Kelly, 160 U. S. 327, but we find the case inapplicable because the facts and circumstances are different from those in the present case. In no just sense can we say that the organization of the Mallet Land and Cattle Company, and the transfer thereto for stock of all the property of DeWitt and Flato, including incidentally, and as only a small part thereof, the lands in controversy, was all a sham transaction. If it was not a simulation—a sham—then so far as jurisdiction is concerned, the purposes of DeWitt and Flato in the transaction are immaterial."

Slaughter vs. Mallet Land and Cattle Co., 141 Fed. 282, 287, 288.

In the case at bar, Haygood & Cutts testified, without contradiction, that this corporation was not formed for the purpose of bringing suits in the United States Court; that being engaged in the practice of law, and also having had occasion to deal in and acquire certain interests in land they wished to incorporate their land purchases; 'that they wished to do this in order to avoid questions of individual liability on warranties of title which might be made in the selling of these lands; also to avoid the results of death; also the necessity for partition of property; so as to reduce their interests to an individual ownership of stock, and that even the taking out of the charter in Dakota was governed by questions of convenience, and not for the purpose of giving jurisdiction.

We have already discussed the amount of land which this corporation owns, the fact that its titles were not acquired from Haygood & Cutts, and that the bulk of it is not in litigation. Therefore, the Court erred in submitting to the jury the question as to whether the title had been conveyed to this corporation or the corporation itself organized to give colorable jurisdiction to the United States Court.

VII.

It has already been pointed out how the plea to the jurisdiction utterly failed. Upon an issue as to whether or not a case should be dismissed it is held:

> "A suit cannot properly be dismissed by a Circuit Court as not involving a controversy of an amount sufficient to come with its jurisdiction, unless the facts, when made to appear on the record, create a legal certainty of that conclusion."

Wetmore vs. Rymer, 169 U. S. 115, 128.
Barry vs. Edmunds, 116 U. S. 550.

VIII.

The reasons assigned by the witnesses, Haygood & Cutts, for wishing to form a corporation to hold lands are each and all valid. The incidents of ownership of realty are governed by the law of the place where the realty is situated. In Georgia even partners owning land are tenants in common as to the same, and both must join in a deed in order to convey the title.

Baker vs. Middlebrooks, 81 Ga. 491.
Printup, et al, vs. Turner, 65 Ga. 71.

The ownership of a corporation holding land is essentially different from an ownership by the individuals composing such corporation.

> "The corporations which held it (land) were existing entities, as distinct and separate from their stockholders and creditors as is one individual from another. They, and they alone, had the power to sell, convey, mortgage, and deal with the lots they held. The charters of the corporations and the laws of the land denied their stockholders and creditors this privilege."

Watson vs. Bonfils, 116 Fed. (C. C. A.) 157, 167.

See also full citation of authorities on this point cited in this case.

The distinction between corporate and individual ownership is particularly true in Georgia, where it is held:

> "One person may own all of the stock of a corporation, and still such individual shareholder and the corporation would, in law, be two separate and distinct persons."

Waycross R. Co. vs Offerman R. Co., 109 Ga. 827, 828.
Newton Mfg. Co. vs. White, 42 Ga. 148.

> "That one person may own a majority or all of the stock of the corporation does not establish an identity between him and it, so as to make acts by him in his individual name its acts and binding on it."

Garmany vs. Lawton, 124 Ga. 876, 879.

> "One corporation may own all the stock in another corporation, but notwithstanding this, the two

corporations would not become merged, but would remain separate and distinct persons."

> **Waycross Air Line R. Co. vs. Offerman R. Co., 109 Ga. 827, 828.**
>
> **Exchange Bank vs. Macon Construction Co., 97 Ga. 1.**

> "The two corporations were distinct persons in law, and the contractual relation with one would not be sufficient as a foundation for asserting a lien, under the provisions of the section above mentioned, against the property of the other."

> **Sparks vs. Dunbar, 102 Ga., 129, 137.**

Suppose that Haygood & Cutts had brought ejectment for this land and had undertaken to make out their case by proving a chain of title from the heirs of Pope to Barentine and from Barentine to the Southern Realty Investment Company, supplemented with proof that they had chartered the Southern Realty Investment Company under the laws of the State of South Dakota, and had subscribed to the stock therefor; that they did not wish to own lands individually because of embarrassments in regard to the death, survivorship, dower, partition, warranties of title, and such like real and **bona fide** incidents attaching to individual ownership, and had therefore preferred to be simply the owners of the stock of this corporation, or of a large majority thereof, and that they had no agreement of any sort with the corporation by which they could compel it in law to make conveyances to them. Could it be pretended for one instant that they could maintain such a suit. It is manifest that they would have no standing in court, either in law or in equity.

It is therefore perfectly evident that the ownership by the Southern Realty Investment Company is entirely distinct from the ownership by Haygood & Cutts, even if they were the sole stockholders of that corporation, which they are not.

It is also further evident that valid reasons of a sound business nature existed for the formation of a corporation to hold the title to lands rather than leaving them held by individuals, where death might produce such serious conditions.

With the title vested in the corporation the only interest of the individual is in the stock; his death, or even a desire to partition his interest in life, creates no disturbance to the ownership of the lands; it leaves them owned by the corporation, regardless into whose hands the stock may go. It leaves the stock alone liable for debts of the individual and leaves the corporation unembarrassed by debt, no matter how insolvent its stockholders may become.

Also in the matter of conveyances of land, the corporation can convey land with full warranty of title, and the individual stockholder is not bound nor his estate liable for any breach of such warranty.

Therefore, each and every one of the reasons given for the creation of the corporation and the vesting of the titles to land in this corporation are each and all sound. Where a corporation is organized for **bona fide** and valid reasons and title to property is **bona fide** vested in it without any trust, expressed or secret, in favor of any other person, the fact that knowledge that such corporation could sue in the Federal Court was also a reason for forming the same and for vesting in it the title to the property and converting the interest into an ownership of stock in lieu of an ownership of land, does not render the transaction other than **bona fide**, or in any way affect the jurisdiction of the United States Court.

Macdonald vs. Smalley, 1 Peters, 620, 624.
Barney vs. Baltimore, 6 Wal. 280, 283.
Crawford vs. Neal, 114 U. S. 593.
DeTaveaga vs. Williams, 6 Sawyer, 593.
Neal vs. Foster, 36 Fed. 41.
Foote vs. Hancock, 15 Blatch, 340.
Dickerman vs. Trust Company, 176 U. S. 181, 191.
South Dakota vs. North Carolina, 192 U. S., 286, 310, 311.

IX.

The statutes of Georgia expressly contemplate that its lands may be owned by foreign corporations. The only restriction being that whenever a corporation becomes possessed of more than five thousand acres of land it must also become incorporated under the laws of Georgia.

Civil Code of 1895, Section 1849.

But its failure to do so can only be taken advantage of by the State of Georgia under a direct proceeding, and in no way impairs the validity of the title in a suit between individuals.

American Mortgage Co. vs. Tennille, 87 Ga. 28.

X.

It is settled law that the organization of a corporation cannot be collaterally attacked but only in a direct proceeding for that purpose.

Ryland vs. Hollinger, 117 Fed. (C. C. A.) 216, 218.

The statute of South Dakota under which this charter was granted provides as follows:

> "The due incorporation of any company, claiming in good faith to be a corporation under this chapter, and doing business as such, or its right to exercise corporate powers, shall not be inquired into collaterally, in any private suit to which such de facto corporation may be a party; but such inquiry may be had and action brought, at the suit of the State, in the manner prescribed in the Code of Civil Procedure."

Compiled Laws of Dakota, Sec. 2892.

XI.

Therefore, under the facts of this case, it appeared that this was a South Dakota corporation, a citizen of such State, that the lands which it held had been conveyed to it absolutely without any trust being reserved, that the particular transaction set out as having taken place in the pleading had no foundation whatever in fact, but that the Popes had sold their land under an absolute warranty deed for a cash consideration. Even if the Court could go properly into the consideration of their real estate transactions under this plea, none of them show that the claim of ownership of the plaintiff corporation was otherwise than in its own right.

It, therefore, follows that the Court erred under each of the assignments of error made; that it erred in submitting to the jury under the facts of this case the question of whether or not the Court had jurisdiction, and it particularly erred in not directing upon the plea a verdict for the plaintiff, finding against the same.

Delaware, etc., R. R. vs. Converse, 139 U. S. 469, 472.
Anderson County Commrs. vs. Beal, 113 U. S. 227, 241.
North Penn. R. R. vs. Commercial Bk., 123 U. S. 727, 733.
Famous Smith vs. United States, 151 U. S. 5055.

Respectfully submitted,

ALEX. C. KING,
of Counsel.

KING, SPALDING & LITTLE,
Attorneys for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

October Term, 1907.

No. 43.

SOUTHERN REALTY INVESTMENT COMPANY,
Plaintiff in Error,

vs.

NANCY WALKER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA, WESTERN DIVISION.

BRIEF FOR DEFENDANT IN ERROR.

Statement.

The Southern Realty Investment Company, averring itself to be a corporation of the State of South Dakota, brought an action of ejectment against Nancy Walker, a resident and citizen of Georgia, in the above-mentioned Circuit Court of the United States. The attorneys-at-law who brought the suit for it were Haygood & Cutts, a firm composed of John Haygood and Eldridge Cutts, of Fitzgerald, Georgia.

The defendant pleaded to the jurisdiction of the court.

The plea set up that the suit by the corporation was a fraudulent device, intended to give jurisdiction to a court of the United States of which the courts of the United States did not properly have jurisdiction, and that the suit did not really and substantially involve a dispute or controversy within the jurisdiction of the court, but that the parties were fraudulently made for the purpose of creating a case cognizable therein.

The plea, with perhaps somewhat more of detail than was necessary, sets forth the scheme and plan by which it was sought to create a colorable diversity of citizenship. The plea, while in one or two minor and entirely separable details not strictly accurate, was in all its essential averments overwhelmingly sustained by the evidence. The charge of the court correctly submitted the issue to the jury, and the jury rendered a verdict sustaining the plea.

The essential averments of the plea are that the corporation was in reality composed of John W. Halgood and Eldridge Cutts, attorneys-at-law at Fitzgerald, Georgia, and citizens of the State of Georgia; that these gentlemen were and are largely engaged in bringing suits for lands, such suits constituting the greater part of their business; that the corporation was formed by them for the purpose of bringing suits for lands in the courts of the United States in cases which could not otherwise be brought in those courts because of a want of diversity of citizenship between the parties; that it was the business of the corporation to supply this diversity of citizenship and furnish federal court jurisdiction; that the bringing and prosecution of suits for the use and benefit of the said John W. Haygood and Eldridge Cutts, or for the use and benefit of them and their clients, was not only the business for which the corporation was formed, but was "the real and practically the only business carried on by it," and that the present suit was a suit of this character carried on for such purpose.

It appears from the evidence that plaintiff holds a certificate of incorporation under the great seal of the State of South Dakota, dated December 5, A. D. 1904. This certificate of incorporation was procured, at the instance of Messrs Haygood & Cutts, by one Philip Lawrence, of Huron, South Dakota, whose business he styles, in the letter-head of his letters to Mr. Eldridge Cutts and Messrs. Haygood & Cutts, "Incorporation Bureau of Philip Lawrence, late Assistant Secretary of State."

In a letter to Mr. Eldridge Cutts, written May 7, 1904, in response to an inquiry from the latter, he quotes, "our lowest terms to attorneys who send us their business," viz., $25 up to $25,000; "amounts quoted cover all expense for charter and domiciliary office and representation for one year." The letter furnishes information that "We have secured 985 charters for non-residents inside of three years and quite a number from your own State. We furnish the South Dakota incorporators. Only three incorporators are required, two at your end and one here. In article 5, however, you name all the directors you may need, naming two-thirds there, and we will insert the one-third here that is required under our laws; but we send proxies and resignations of the South Dakota directors when we send charter, so that you can elect others in their stead. Up to the present time our courts have not decided that South Dakota directors will remain on the borad. Should the court decide that way any time in the future, it could be very easily provided for" (Record, p. 113).

The articles of incorporation name six incorporators, viz., John W. Haygood, Eldridge Cutts, John M. Barentine, T. M. Parsons, Philip Lawrence, and Marian Hoke, the last named being the stenographer in Philip Lawrence's office.

Philip Lawrence is also named as one of the three directors, the other two being John W. Haygood and Eldridge Cutts.

Philip Lawrence sent in his resignation as director when he sent the charter, according to the plan above outlined. In the same letter, it seems, he enclosed a surrender by himself and Marian Hoke of the stock which was later to be issued to them when the company should be organized, so that it could be entered, surrendered, and canceled contemporaneously with the issuing.

John M. Barentine and T. M. Parsons furnished the use of their names as incorporators at the instance and request of Messrs. Haygood & Cutts. Afterwards one share of stock was issued in the name of each, in order to qualify them for the nominal office of president and vice-president respectively. How exceedingly nominal their offices were can not perhaps be adequately conceived of, without reading their testimony (Testimony of Barentine, pp. 33-46; Parsons, pp. 46-49 of Record).

The corporation had no records, except a minute book kept by Mr. Eldridge Cutts (Record, p. 25).

It had never at any time during its entire existence a cash book, or cash, or a ledger, day book, or a book or book entry of any description; had no bank account or cash account of any kind, or had never made a deposit or drawn a check; had never received or paid out a dollar; had never written or received a letter; had no letter-heads or stationery; no office or office furniture or known place of business; had never registered or made returns for taxation as corporations of that character doing business in the State are required to do under the laws of Georgia; had no personal property of any kind, and between its so-called organization, in January, 1905, and the filing by defendant of the above-mentioned plea, in June, 1905, the only three business transactions which the corporation had was to serve as a receptacle for the legal title of three pieces of land, for which Haygood & Cutts forthwith brought suits in its name in the United States Circuit Court.

These three transactions were conducted by Haygood & Cutts. So far as any arrangement was made, Haygood & Cutts made it; so far as any money was paid, they paid it out of their own funds. The court costs in each of the three cases were paid by them out of their own personal funds, and not charged to the corporation by them; nor did the corporation give them credit for the costs so paid.

The president of the corporation testified that he had no knowledge of either transaction, and did not know that the company owned any lands or had brought or contemplated any suits.

His testimony thus states his connection with the corporation:

> "I am the president of the Southern Realty Investment Company. I don't know how long I have been president; Col. Cutts and Col. Haygood can answer this. After the company had a few meetings and I understood it, I don't know how long it was then. The books will show I was president as far back as April 14, 1905, because I did not understand the nature of the corporation for some little time after it was organized, and we had little trouble over at Irwinville, and I came up to the office and rehearsed it, and I realized that I was an officer and I think I was elected president before that time and they were asking me for some affidavits" (Record, p. 33).

This witness further testifies:

> "As president, I have no knowledge of any cash; I never knew of the company ever having any money. I have no bank account for the company. I don't know who is treasurer. I don't look after it at all, except to sign such papers as are presented to me. Col. Cutts presents them to me. I have no knowledge of the company except the papers are presented to me by Col. Cutts. When I sign papers, I don't ascertain about where the money goes. When I buy property I have no knowledge of where the money comes from to pay for it. I could not say just now who are the directors of the company. I do not know any of them. I have attended meetings; I don't know whether you would call it directors' meeting. Myself, Col. Cutts and Haygood and Mr. Parsons are the directors. Miss Rosa Ivery is the secretary of the company.
>
> "As president, I never have sold or purchased any lands. As president, I have knowledge of the purchase or sale of lands. I sign the deeds. Haygood & Cutts looks after the matter in every particular for the company. I have no

knowledge of what trades were made for lands until they come before me as president of the concern" (Record, pp. 34-35).

The Miss Rosa Ivery mentioned by the witness was the stenographer of Messrs. Haygood & Cutts.

Testimony of Barentine, p. 33 of Record.

The witness further testified (referring to the land in controversy in the present suit):

"As to how I came to take a deed to the land, I think the deal was left to the lawyers. When it was deeded by me I did not receive anything—no part of the two thousand dollars as recited in the deed made by me to the company was paid to me. Mr. Cutts read the deed over to me. I had no agreement that the company was to pay me two thousand dollars for it. At the time the deed was taken to me I had no claim in it—no more than one stockholder of the company. I signed the deed because Messrs. Haygood & Cutts brought it to me. I made it to this company. I never paid anything personally for this land—I never signed any paper to pay for it personally. I have no knowledge of my own as to whether the parties who made the deed were ever paid any money—if they were ever paid any I don't know of it. As to the understanding the heirs of Pope had as to what they were to be paid for the land and as to when it was to be paid, they had that with our lawyers. I have no knowledge of that myself. I was president of the company at that time. I had knowledge of what the trade was. I did not say that the company has never had any money—I said if they had any I didn't know it; I have never seen any. I don't know what, if any understanding exists between the Southern Realty Investment Company and the heirs-at-law of D. H. Pope as to what D. H. Pope's heirs are to be paid. I never made the deal with the Pope heirs. I don't remember as to any other lands the company has in this county. I can't say now as to their owning any lands in this county. I don't know anything in the world about the Gelders or Cohen land being in suit in the United States court except in a roundabout way. I do not know of my own knowledge.

"The company has had no other president besides me since the organization. I don't remember about the terms of the purchase of the lands in this county by the company—I don't remember about that. I don't remember if the company paid anything for that land; if they have paid anything I don't know it. I don't remember what other lands the company has outside of the tract in this county that I have just asked you about. I don't look after this business at all; I have got other business to look after, and you can find out more from Haygood & Cutts than you can from me. I don't look after it at all, only when we call meetings. Col. Cutts & Haygood call the meetings—that is, they tell us to come up and we have meetings. We have had three or four meetings. I think Col. Cutts and Miss Rosa Ivery writes up the minutes. Any papers that are necessary for me to sign, they get them up and explain them to me and I sign them as president. The place of business of the Southern Realty Investment Company is in Haygood & Cutts' office. where we have been meeting at. They have never had any meetings anywhere else. They have no other place where their sign is at indicating their place of business. I don't remember seeing any stationery. I couldn't say that I had ever seen anything in the way of books, papers, office furnishings, or personal things of any sort except those books, etc., I spoke of. I don't know of any personal property" (Record, pp. 35 and 36).

The witness further testified:

"When I made that affidavit I told Mr. Ryman that they considered me as president of that company, but I did not understand the particulars. Col. Ryman remembers my telling him that they considered me as president of the company at that time. I never made any inquiries into it at that time, but I have since. Of my own knowledge I do not know whether the company claims any land at all except simply to bring these suits for Haygood & Cutts; I do not know about that; I could not say they do. When they bring me papers to sign, I sign them after investigating them. I took stock at request of them because they were attorneys for me in other matters. I never directed them to bring suit as president. I did not as president have knowledge of what suits they were bringing—not until they were brought. As to the terms of the employment of Haygood & Cutts by the Southern Realty Investment Company in these suits, and as to the fees we are paying them or what interest they have in the suits, we have never had any understanding at all. I was never present at any meeting where they were directed to bring suits and their compensation fixed. All the lands were originally bought by Haygood & Cutts, and then they brought me the papers to sign. I don't know what understanding they had with the persons they traded with. I don't know what the persons are to get out of it or what Messrs. Haygood & Cutts are to get out of it. Messrs. Haygood & Cutts are attorneys-at-law and have their office here at Fitzgerald. They are engaged extensively in bringing land suits. This one at Macon is the only land suit they are in that I have knowledge of except the little matter at Irwinville. The only thing that I know about this company is that they asked me to take the president's office, and to accommodate them I did. I don't remember what they told me at the time they asked me to take stock. Nothing was said about their wanting this company to bring suits instead of the party owning the property. They told me that they wanted to form a company like this and wanted me to be president and have some stockholders and they never mentioned suits. I never knew about the suits until they were brought. I was not consulted about the bringing of any of these suits. I was not asked about the purchase of the lands from Mrs. Cohen and have no knowledge of that. I was not consulted as to the purchase of the lands from S. Anne Conner and Mary Ham" (Record, pp. 37, 38, and 39).

He further testified:

"Their office [Haygood & Cutts'] is known as our place of business. I consider Haygood & Cutts business managers. I don't remember; I can't say what office they hold. The business of the company is really done through its attorneys. The company has done no business except through its attorneys. We just organized the company, as I told you while ago, and they just looked after it. The president got stock donated to him" (Record, p. 39).

He further testified:

"During a conversation over at Abbeville, shortly after the filing of this present suit of Southern Realty Investment

Company against Nacy Walker, Mr. Hall intimated that this company was organized for the purpose of bringing suits in the United States court, and I told him it might have been. I don't know where the conversation occurred; it might have been at Fitzgerald. He wanted to insinuate that the organization was formed for rascality. To tell you the truth, I sorter got ashed up a little and the conversation was dropped, and I don't remember what was said. I don't know for what purpose the company was really organized. I don't kno that it has ever done any business except as to the bringing of these suits. During the time that I have been president the company has not done any business in South Dakota that I know of. It had no office there. I don't know that there are any stockholders there. So far as I as president am concerned, I have never known of any business in South Dakota. I have never known the company to have any place of business except in the law office of Haygood & Cutts at Fitzgerald. I never wrote a letter for the company nor received any for the company. I have seen some letters written to Mr. Cutts that he has called my attention to, but I don't remember what they are" (Record, pp. 39 and 40).

He further testified:

"I don't know the reason why when Haygood & Cutts asked me to go into the company I asked them if it was honest and honorable. I haven't got any confidence in lawyers either; that's the reason I asked if it was honest and all right, because it was lawyers. When I gave them full power to bring any suits they pleased or buy any property they pleased, to make any deal, they were still lawyers. They had already told me it was honorable. I didn't know what suits they expected to bring" (Record, p. 43).

And further:

"I knew that the company had no money to pay for the Barentine land, two thousand dollars. I don't know where I thought that the two thousand dollars to pay for the land went—Mr. Barentine did not get it. I think I have a right to acknowledge receipt of money which I did not get" (Record, p. 44).

The testimony of T. M. Parsons, while less full, was along the same line (Record, pp. 46, 47, 48, 49).

The minutes indicate that the meeting was organized January 4, 1905. The minutes show that at this meeting John M. Barentine was elected president; T. M. Parsons, vice-president; Eldridge Cutts, treasurer and to act as secretary, and "Haygood & Cutts" were authorized to act as attorneys and counsel for the company.

With reference to the capital of the company the minutes recite:

> "The entire amount of capital stock having been subscribed, it was resolved that lot of land No. 218, in the 3d district of Wilcox County, be received and accepted by the company at a valuation of $1,830.00; but, there being a mortgage on the same of $330.00, it was resolved that this corporation assume said mortgage, to wit, a mortgage to Mr. Thos. Berry, payable Oct. 12, 1905, and that stock to the amount of $1,500.00 be issued for said land. It was also resolved that 20 acres, subdivision tract No. 4387 of the Amer. Trib. Sold. Colony Co. domain (in Wilcox County) be received and accepted by the corporation at a valuation of $150.00, and that an undivided one-half interest in lot of land No. 121, in the 7th district of Worth County, be received and accepted at a valuation of $1,500.00. The remainder of the stock, to wit, $1,850.00, being subscribed for as follows: By John W. Haygood, $925.00, and by Eldridge Cutts, $925.00; said subscriptions were received and accepted with the understanding that payments would be made as called for by the directors at such times and in such amounts as may be needed by the corporation, stock to be issued whenever called for after payments have been made, but not to be issued in amounts less than $100.00 (one share)" (Record, p. 65).

It is probable that these minutes were prepared for evidentiary purposes, and perhaps no great significance is to be attached to the recitals.

Assuming that the recitals are true, the transfer of property to the corporation by the stockholders is to be regarded as a mere legal prerequisite to its right to do business. It was, of course, necessary to at least go through the form of paying in the capital stock, and as a vacant, unoccupied piece of land could perhaps be more conveniently temporarily parted with for this purpose than an equivalent amount of money, the payment of the capital stock (so far as paid at all) in land sheds no light upon the question of the purpose for which the corporation was formed and the character of business which it proposed to do. It appears from the evidence that the corporation never even took possession of the land or did any act with respect to it. Even if a deed were made to the corporation, such deed was not offered in evidence, nor does it appear to have been known to any one, outside of the office of Messrs. Haygood & Cutts, that the corporation owned or claimed to own this property until after the minutes were produced in court upon the application of the defendant. It is perhaps immaterial whether these lands, which the minutes recite were turned over to the corporation and accepted by it as a payment upon the subscription of Messrs. Haygood & Cutt for its capital stock, were lands of which the titles were in dispute, and whether the bringing of a suit in a court of the United States was contemplated as to these lands. It appears, however, that of the three tracts so turned over, there was an adverse claim to the lot of land No. 121, in the seventh district of Worth County (Record, p. 102).

As to lot No. 218, in the third district of Wilcox County, Mr. Cutts testified that he did not, at the time this land was turned over to the corporation, know that the land was adversely claimed, and that this information only came to him subsequently. It will be seen, however, that, according to the stenographic report of the evidence of Mr. Cutts on a former occasion upon the trial in the State court of the case of the State of Georgia *vs.* S. M. Cohen, the witness testified on that occasion that he ascertained that there was an adverse title to this lot before the Southern Realty Investment Company bought it (Record, p. 111).

It is fair to the witness to state that he disputed giving such testimony; but in this, as in numerous other instances where his testimony is self-contradictory or is disproved by other testimony or other facts in the case, the question of creditability was only for the jury, and the jury had determined the issues of the fact in the case against the plaintiff's contention. These two tracts constitute the entire capital stock of the corporation, except the twenty acres' subdivision accepted by the corporation at a valuation of $150.

Passing from the formal organization of the corporation, the mere empty shell, as it were, within which its body and form and corporate life are to be sought, to its acts from the time of its organization to the filing of the plea to the jurisdiction, it will be found that during this period of its corporate life its entire acts consist of three transactions. These transactions consist of the making to the corporation, by persons from whom Messrs. Haygood & Cutts claim to have purchased lands, deeds intended to vest in the corporation the legal title and right to sue in a court of law for the land, and almost contemporarily that the acquisition of such deeds on bringing in the Circuit Court of the United States for the Southern District of Georgia of three suits by the corporation against the persons in adverse possession of lands claiming title thereto. The corporation paid no money for these lands and gave no note and entered into no obligation or promise to pay money therefor. It had no money to pay. The suits were brought in the name of the corporation by Messrs. Haygood & Cutts, who formed and owned the corporation and who did in the name of the corporation every act that the corporation has ever performed; have bought the lands without the purchase being discussed by the corporation or known to the officers of the corporation; they made the trade in their own names; they paid the money in their own names and with their own individual funds, and not as a loan to the corporation; they prepared and filed the suits without the knowledge of the president or other officers of the corporation, and the president and vice-president, though their offices were within a block, knew nothing of either transaction and did not know that such suits had been brought until some time afterwards, and then obtained the knowledge not from the corporation, but from the attorneys of the defendants in the suits, the costs in which case were paid by Messrs. Haygood & Cutts out of their own individual funds, and this not as a loan to the corporation or at the corporation's request or by its authority. No entry was made upon the books of the corporation, and the moneys which Messrs. Haygood & Cutts paid out for costs in the three cases brought and conducted by them in the name of the corporation they did not upon their own books charge the corporation with the amounts so paid.

These three transactions furnish the life history of the corporation up to the time that its purposes were called into question by the filing of features of the bill to the jurisdiction in the present case. In order to pass upon the questions raised by the plea, it will be best to look at the individual features of each transaction as shedding light upon the common purposes; each runs through all. These are:

First. The Cohen transaction, eventuating in the Geller's suit.

Second. The Pope transaction, eventuating in the present suit.

Third. The Conner & Ham transaction, eventuating in the Hall suit.

The first two have gone before the courts for investigation, and there is an entry upon plaintiff's minutes relative to each. The third transaction had not come into the limelight of investigation until the facts were brought out by evidence, over plaintiff's objection, in the present case. There is no entry upon plaintiff's minutes of this third transaction.

It will be perhaps more convenient to consider first the transaction which forms the important subject-matter of the present suit, and then look to the other two transactions for the side light which this sheds upon the former.

The land sued for consists of four hundred and ninety acres, conceded to be worth at the time of the inquiry in question more than $2,000. This land was conveyed by deed, dated February 13, 1905, by the heirs-at-law of D. H. Pope, deceased, to John M. Barentine, in consideration of $250. The $250 was paid to John D. Pope, one of the heirs-at-law of David H. Pope, acting for all. The personal check of Haygood & Cutts was paid for same. Haygood & Cutts made the purchase; the draft for the purchase-money was drawn on them. The deed was made to Barentine by the sellers at their direction. John M. Barentine knew nothing of the purchase of the land in his name until Mr. Eldridge Cutts brought to him a deed for him to sign, conveying the same land to the Southern Realty Investment Company for an expressed consideration of $2,000. The corporation paid Barentine nothing for the land and expected to pay him nothing for it. John M. Barentine never claimed to own the land; did not expect to pay for it, and made the deed for the sale for the reason that Mr. Eldridge Cutts requested him to make it. He did not, as the president of the company, have any knowledge that the company owned the land and did not know that a suit was to be brought or had been brought for its recovery until he was called as a witness in the Cohen case, hereinafter referred to. No one connected with the corporation had anything to do with this transaction save and except Haygood & Cutts, who used the corporation's name in taking a deed to it and brought the present suit in the name of the corporation for the recovery of the land. They paid the court costs out of their personal funds, not charging the corporation for the amount so paid. They conducted the suit, taking the subject-matter of the same as equal to the jurisdictional amount of $2,000 (and it is conceded that the land is worth considerably more than this sum); it may be said that $250 represents the value of the title sold by the heirs-at-law and balances the value of the jurisdiction furnished by the Southern Realty Investment Company as its contribution to the manufactured product of which Messrs. Haygood & Cutts are the real and beneficial owners.

The Cohen transaction is similar in its larger features to the foregoing. The land conveyed was city property situated in the city of Fitzgerald. The deed is from Glory Cohen to the plaintiff, The Southern Realty Investment Company, and bears date January 23, 1905. The deed recites that the price paid was one thousand five hundred dollars. The price actually paid was, according to the testimony of Mr. Eldridge Cutts, four hundred dollars, though the draft drawn for the purchase price is only for $175, and the checks produced in response to defendant's motion conform to the amount of the draft. In addition, however, to this $175, Messrs. Haygood & Cutts produce a check drawn by them in favor of S. M. Cohen, the husband, after the filing of the suit, for $50, and two checks, drawn by them some time after the filing of the plea to the jurisdiction, for $20 and $10.50 respectively, payable to "cash." The name of neither of the Cohens appears on either of these checks, but Mr. Cutts testifies that these checks, or the money which they represent, was paid to S. M. Cohen, husband of Glory Cohen, and forms a portion of the $400 which he testifies was paid for this property. No part of the money was paid by the Southern Realty Investment Company. Of the $175 paid upon the order of Glory Cohen, the maker of the deed, in taking up her draft for purchase-money, $55.50 was paid by the individual check of Eldridge Cutts and $119.50 by the check of Haygood & Cutts. The $50 check paid S. M. Cohen and the checks of $20 and $10.50 to "cash" are all of them checks of Haygood & Cutts. The transaction was between Haygood & Cutts and S. M. Cohen, the husband of Glory Cohen. S. M. Cohen had previously sold the property for full value to Isador Gelders, who was in possession at the time S. M. Cohen, representing Glory Cohen, resold it to Haygood & Cutts, who took title in the name of the corporation. Mr. Cutts testifies that at the time of this purchase he knew Gelders "had some sort of a claim" to the property. The evidence discloses that for thus twice selling the same property S. M. Cohen was subsequently tried and convicted in one of the criminal courts of the State of Georgia. Messrs. Haygood & Cutts were the attorneys who defended him upon the trial of the criminal case, and it appears that Mr. Cutts testified as a witness upon that trial. Mr. Cutts testifies that the defense of the criminal case did not constitute a part of the consideration of the conveyance from Glory Cohen to the corporation. He does not testify, however, that his firm charged or were paid any fee for their services in that case.

The president of the corporation knew nothing of this transaction until after the institution of the criminal prosecution against Cohen. In fact, his testimony seems to be that he did not up until that time know that he was president of the corporation, and he had to get Mr. Cutts to rehearse the matter to him.

The purchase was never discussed by the corporation; no corporate action was taken looking to its purchase or to bringing the suit. No contract was made with the attorneys relative to their fees. Haygood & Cutts, the corporation, employed Haygood & Cutts, the attorneys, without any sort of understanding between them. Haygood & Cutts paid the costs of court without reporting it to the corporation, the supposed client. It was not charged on the corporation's books. There were no books, no bookkeeper, and only by the purest kind of legal fiction can there be said to be any corporation. The minutes are written up by Mr. Eldridge

Cutts and signed by him as "acting secretary," and by him alone. When confronted with the freshness of the ink, Mr. Cutts admitted that the minutes may not in every instance have been written out at the time they bear date. The minutes which refer to this particular transaction bear date February 3, although it appears that not until February 8 was the deed received or the purchase-money draft of $175 thereto attached paid, Messrs. Haygood & Cutts having failed to learn that the same had been sent. The president does not seem to have ever heard of the transaction until after the bringing of the suit against Gelders in the United States court and the subsequent prosecution of Cohen for cheating and swindling.

This land purchased at $175 or $400, as the case may be, is, in the minutes of February 3, 1905, declared to be worth $2,500 or, in view of "possible adverse claims," $1,500. The increment represents doubtless the value of the diversity of citizenship and consequent federal jurisdiction, which seem to have been everything the corporation was to supply. Messrs. Haygood & Cutts supplied the bargain, the purchase price, the costs of court, and the professional services of attorneys.

The remaining transaction was the taking of a deed to the corporation from Mary Ham and S. Ann Conner to a house and lot in the town of Abbeville, Wilcox County, Georgia, and the bringing by the corporation of an action of ejectment in the United States Circuit Court against a party who had bought the lot and built the house on it.

The deed bears date February 10, 1905, and recites that it is made in consideration of the sum of twenty-five hundred dollars paid to the grantors by the Southern Realty Investment Company, the grantee.

It is the undisputed evidence that no such sum was to be paid by the Southern Realty Investment Company or by any one.

It is also the undisputed evidence that the grantors have not been paid a cent for the property by this company or by any one else and hold no one's obligations or evidence of indebtedness.

Mr. Cutts testifies that he or his company was to pay two hundred dollars for the property, but has not paid it, owing to a misunderstanding with the sellers. Judge Haygood testifies that Mr. Cutts conducted this particular transaction, and that he himself is not familiar with it. It appears, however, that the misunderstanding between Mr. Cutts and these clients of his, if misunderstanding it be, was not deemed of sufficient importance to stand in the way of the bringing of the suit in the name of the corporation to recover the property.

Mr. Cutts' testimony that the conveyance represented an actual purchase is, however, in direct conflict with the testimony of Mr. John Conner, husband of Mrs. S. Ann Conner, one of the grantors and brother-in-law of the other grantor. He is also one of the subscribing witnesses to the deed.

According to the account of the transaction given by this witness, his wife and her sister, Mrs. Ham, claimed certain land of which the above forms a part, as heirs of their mother, and employed a Mr. Cannon and Mr. Eldridge Cutts as their attorneys to recover the land, the attorneys to receive a part of the recovery as fees. They conveyed to the Southern Realty Investment Company without the payment of any money and without receiving any note or definite obligation, but with the expectation that they were to be paid; they left the whole matter to the attorneys; no time was fixed, no price agreed upon.

To quote the words of the witness:

> "My wife or Mrs. Ham have not received any money or note for that land yet (referring to land conveyed by them to the Southern Realty Investment Company). They are expecting to be hereafter paid for that land. There is no direct agreement in reference to how they are to be paid. We just left it with Col. Cannon about the price, and we

didn't agree upon (a) certain price. Nothing definite was agreed upon. I don't know when we are to get anything out of this land in dispute—no time set and no definite amount. My wife and Mrs. Ham are to receive something for the land. I know of this deal that was made with the Southern Realty Investment Company by which they got the deed to the land. Mr. Cannon made the deal for my wife and Mrs. Ham. He was to make the deed and all They gave him unlimited power as to the deal to be made" (Record, p. 32).

M. B. Cannon testifies in behalf of plaintiff that he represented Mrs. Conner and Mrs. Ham; made the trade with Mr. Eldridge Cutts for the Southern Realty Investment Company, and that it was not a sham sale as far as he knows. He testifies:

"I was employed first, and then I employed Cutts as one of the attorneys. None of that $200 is to go back to Mr. Cutts at all, and I think if my memory serves me right; in addition to that, I think the Southern Realty Investment Company is to pay me one-third" (Record, p. 67).

The witness does not attempt to explain the somewhat remarkable spectacle of one of the two attorneys getting a parol power of attorney from the clients to make a "deal," on any terms he may see fit, with the other attorney of the same clients, and as a part of the "deal" having the deed recite a consideration some twelve times greater than the true consideration fixed in the verbal agreement made outside of the presence of the grantors under the mysterious parol power of attorney, and under such a "deal" one of the attorneys taking an absolute title to the clients' property taken in the name of a corporation, which never had a dollar, and walking off with the deed without paying a dollar or giving a note or enforceable obligation of any character.

There was no corporate action; the minutes of the corporation are silent, and it seems that even Judge Haygood, the other half of the corporation, must confess that it was a transaction he is not familiar with.

The version of the transaction given by John Conner seems more reasonable and more probable.

If his version be correct, the corporation in this latest transaction has added to its business of manufacturing Federal jurisdiction that of dealing in such jurisdiction as a commodity, furnishing it for a consideration through trusted brokers to whoever may wish to purchase it.

The evidence discloses the existence of conditions at the time the corporation was organized which serve to explain why it was called into being. It appears that in the portion of Georgia where the corporation does business land litigation is very extensive. Messrs. Haygood & Cutts were legal practitioners largely engaged in this business. It appears from the testimony of Mr. Cutts himself that in Wilcox County alone, this being the county where the land which forms the subject-matter of the present suit lies, Mr. Cutts or his firm have pending some half a hundred suits brought to recover land.

It will be further seen from the evidence that the lots of land in that portion of the State contain 490 acres each, and, taking the value of land per acre as disclosed by the evidence, it will be seen that, generally speaking, the value of a lot of land will exceed $2,000 and form the basis of Federal jurisdiction if only diversity of citizenship can be procured. It is fair matter of inference that in a small and very sparsely populated county, where a single firm of attorneys are suing some fifty people for their homes, local conditions and local sentiment would perhaps not be very favorable to the trial of disputed issues of fact in the local courts. It is perhaps legitimate to conclude, from the knowledge which the court possesses of those matters which rest in common knowledge, that a defendant sued in a United States court sitting in a somewhat distant portion of the State, where the case would be tried before strangers and the expense of bringing to the court the large number of witnesses necessary to establish his defense, and the court costs and attorneys' fees would be considerable, would, in many instances be disposed to compromise and settle the suit, however little merit there might be in complainant's claim; and that this is particularly true in a community where the people are, as a class, ignorant, distrustful of courts and lawyers, of small means, and where an unfavorable result would mean to them the loss of their homes, their means of livelihood, and practically all the property they possess. The investment of $175 to $200 in even a bad title might, when reinforced by Federal jurisdiction, be profitable as a basis of negotiating a compromise settlement; and it needs no argument to show that legal practitioners engaged in the business of buying up claims of title at from one-fifth to one-twelfth of the value of the land and transmuting these claims of title into suits in the United States court by the simple device of adding to their office of attorneys the role of corporation, would find the business sufficiently lucrative. It appears that Mr. Eldridge Cutts, so far back as May, 1904, entered into negotiations with the "Corporation Bureau of Philip Lawrence" for the purchase of a charter (Record, p. 69). Between this date and December, 1904, when the charter was actually applied for, it appears that he moved from the town of Abbeville to the larger city of Fitzgerald, a more central and convenient point from which to conduct extensive land litigation, and formed a copartnership with Mr. John W. Haygood, who was likewise largely engaged in the same business of bringing suits for land.

It appears that Messrs. Haygood & Cutts immediately thereafter embarked in the business of buying land claims to lands adversely held and claimed, making such purchases at a small fraction of the value of the land and taking title in the name of a corporation which had no money, no books, no outward semblance of existence, and which subserved no function and did no business except to furnish to Messrs. Haygood & Cutts a receptacle for the titles which they purchased or upon which they were employed as attorneys to bring suit, and thereby enable them to bring suit in a court of the United States. It appears that the corporation did no other business, had no machinery for doing any other business, no office, money, books, stationery, or equipment of any character. Messrs. Haygood & Cutts made the trade, paid the purchase price, paid court costs, and conducted the litigation. It seems quite clear that the corporate name was a mere adjunct to the business of Messrs. Haygood & Cutts, and save and except the incorporation bureau, which obtained the charter at a cost of $25, and the stenographer in their office, and two neighbors and clients, who, purely as a matter of accommodation, agreed to sign whatever papers they might request, it appears that the corporation was a thing utterly unknown in the community, and escaping even the vigilant eyes of the omniscient taxgatherer, having neither a local habitation nor a name, except as a sort of John Doe fiction to enable Messrs. Haygood & Cutts and their clients to bring ejectment suits in a court of the United States.

It appears that there is a network of fraud and deception surrounding every transaction. The consideration of the deeds is grossly misstated in each case where there was any consideration at all, and there was a careful concealment from the public of the fact that behind the corporation and using the name of the corporation it was Messrs. Haygood & Cutts, and not the corporation, which was acting—a concealment accomplished in the case at bar by conveying title to Barentine, and then have Barentine convey to the corporation at a different price, Barentine having, in fact, absolutely nothing to do with the transaction beyond *simply* signing the deed to "accommodate" Colonel Cutts.

If the purposes of a corporation are to be judged from the acts and transactions which make up its entire business and constitute its corporate life, there can be no doubt that this corporation is nothing but a very thin gauze, intended to supply federal jurisdiction to Messrs. Haygood & Cutts and their clients. Tested by the conditions which existed when the corporation was formed, the motives, the source from which the owners of the charter were to draw their profit from its use, the corporate charter must be regarded as an attempted disguise of their scheme and purpose to confer upon a court of the United States an apparent jurisdiction of a controversy not properly cognizable in that court.

It is not deemed necessary to refer at length to the reasons given by Messrs. Haygood & Cutts for purchasing their South Dakota charter. They state as one controlling reason that under the laws of South Dakota a charter could be obtained quicker than under the laws of Georgia, the laws of Georgia requiring one month, or three months if they should prefer awaiting a regular term of the court to the expense of a trip over the railroad to the residence of the presiding judge.

It appears from the evidence, however, that negotiations were entered into for the purchase of this charter as early as May 2, and the charter was not obtained until December following, a term of the Georgia court having intervened between these dates; and it further appears that after the corporation obtained this charter early in December it was not organized until January, and after it was organized it did no business until the following June, except to take the three deeds and bring the three suits in the United States court; and it further appears that even after the filing of the plea to the jurisdiction, it has done no business up to the present time except one or two small transactions, which seem to have been done and entered upon the minutes for purely evidentiary reasons.

Another prime consideration, they testify, was the question of cheapness. It appears, however, from the testimony that the Georgia charter would have only cost $19 or $20, as against $25 paid for the South Dakota charter, or, including traveling expenses to the county of the judge's residence (if the matter was one for extreme haste), some $7 or $8 or $10 additional. As against this, it is to be considered that the South Dakota charge involves a continuing expense of $15 a year.

The other reasons assigned by them appear equally flimsy, and we think the jury were well justified in reaching their conclusion that the reasons assigned by Messrs. Haygood & Cutts were outweighed by motives and considerations of profit to be derived from the manufacture and supply of federal jurisdiction.

ARGUMENT.

We think the statement of the case leaves little need of argument or the citation of authorities. This court has steadily set its face against frauds upon its jurisdiction, under whatsoever guise such frauds may be clothed. The court will not inquire into the citizenship of the stockholders of a corporation. For jurisdictional purposes, it is conclusively presumed that the corporation is composed of citizens of the State under whose laws it holds its charter. The court, however, has not held that it is beyond the court's power to inquire into the purposes for which the corporation was formed and the purposes for which it has taken over the legal title to property. It has never been held that a corporation may carry on the business of furnishing jurisdiction to other parties. A fraud upon the jurisdiction of the court derives no sanctity from the fact that the real parties may garb themselves in the attire of a foreign corporation.

This subject is dealt with in Lehigh Mining & Manufacturing Company *vs.* Kelly, 160 U. S., 327. The corporation which brought the suit in that case was a real corporation, having a real existence and carrying on a real business, and not a mere empty shell, as in the case at bar. The corporation was, however, formed by the stockholders of a Virginia corporation in order to give to a circuit court of the United States jurisdiction of an action to recover lands in possession of citizens of Virginia, which action could not be maintained by the Virginia corporation for lack of requisite diversity of citizenship. It was held under the evidence that the formation of the foreign corporation and the transfer of the legal title to that corporation should be regarded as a mere device to give jurisdiction to the circuit court and was a fraud upon that court, as well as a wrong to the defendants.

It is conceived that it makes no difference whether an existing Virginia corporation makes a transfer to the non-resident Pennsylvania corporation or whether, as in the case at bar, the citizens of a State should with their own funds purchase property, taking the name in a foreign corporation for the manifest purpose of conferring jurisdiction upon a court of the United States. No consideration passed in the latter case any more than in the former. The corporation had no funds, took no corporate action, paid no money, and cannot be regarded as anything more than an empty receptacle for the legal title for the benefit of Messrs. Haygood & Cutts, the real owners. There was no contract between the corporation and Messrs. Haygood & Cutts as to what share of the recovery Messrs. Haygood & Cutts were to receive as fee. They could not be paid otherwise than by a share of the recovery, as the corporation has no money wherewith to pay them. Messrs. Haygood & Cutts paid the costs out of their own pocket, without even apprising the corporation of the fact, and they were not credited by the corporation with the amount so paid. It was Haygood & Cutts, styling themselves a corporation, having a secret, undisclosed understanding with Haygood & Cutts, the lawyers, and the transaction was not an isolated one, but was one of a series, making up in their entirety the entire business transacted by the corporation throughout its life's history. Can it be doubted that the recovery would belong entirely to Messrs.

Haygood & Cutts? They owned the corporation, except three complimentary shares given to other parties to qualify them for a purely nominal office, and accepted all such parties purely as a matter of "accommodation" to Messrs. Haygood & Cutts. The corporation owed no debts, and the lands, when recovered, would have been, for practicable purposes, as absolutely owned by Messrs. Haygood & Cutts, who had paid the purchase price, the court costs, and had created the value by their services as attorneys, as though they had taken the deed in their own names instead of the sham of taking it in the name of the corporation.

From beginning to end, everything connected with the corporation's pretended ownership of the property was the merest sham. The corporate name and pretended ownership was a mask, taken on to subserve the one purpose of furnishing federal jurisdiction, and it could, and doubtless would, have been thrown aside as soon as that purpose was accomplished. They are the stockholders and have the right and power to divest the corporation of its title and of its existence at any time. Their control of the property, their management, their rights of ownership, have not been impaired or in any way affected by the empty form of pretended corporate ownership. As held in Lehigh Mining & Manufacturing Company *vs.* Kelly, *supra,* quoting Little *vs.* Giles, 118 U. S., 596, "Where the interest of the nominal party is simulated and collusive, and created for the very purpose of giving jurisdiction," the court should not hesitate to apply the wholesome provisions contained in the fifth section of the act of March 3, 1875, c. 137.

It cannot be doubted, under the facts appearing in the present case, that the interest of the Southern Realty Investment Company was created for the very purpose of giving jurisdiction. It was collusive and intended for no other purpose than to give an apparent jurisdiction to the United States court of a suit conducted in the corporate name by Messrs. Haygood & Cutts in reality for their own benefit.

The corporation had never more than a technical legal title conferred upon it for the purpose only of bringing a suit in the federal court.

As this court says in Lehigh Mining & Manufacturing Company *vs.* Kelly, *supra:*

> "As we have said, that corporation may [illegible] required by those who are stockholders of its grantor, and who are also its own stockholders, at any time, and without receiving therefor any consideration whatever, to place the title where it was when the plan was formed to wrest the judicial determination of the present controversy from the courts of the State in which the land lies. It should be regarded as a case of an improper and collusive making of parties for the purpose of creating a case cognizable in the circuit court. If this action were not declared collusive, within the meaning of the act of 1875, then the provision making it the duty of the circuit court to dismiss a suit, ascertained at any time to be one in which parties have been improperly or collusively made or joined, for the purpose of creating a case cognizable by that court, would become of no practical value, and the dockets of the circuit courts of the United States will be crowded with suits of which neither the framers of the Constitution nor Congress ever intended they should take cognizance" (pp. 343, 343 of opinion in Lehigh Mining & Manufacturing Company *vs.* Kelly, 160 U. S., 327, *supra*).

What is stated in that case is still more apposite to the facts of the case at bar. It was hardly within the intention of the framers of the Constitution that the furnishing of Federal court jurisdiction should become a business to be carried on by corporations chartered and organized for that very purpose, and in this way Federal jurisdiction be made an article of merchandise or commodity to be manufactured, sold, and furnished to its stockholders or their clients.

Every court has the power to prevent frauds upon its jurisdiction, and this court has been vigilant in its efforts to prevent such frauds. It will not suffer itself to be imposed upon by any device, however cunningly conceived and carried out. The power of the court to prevent such frauds would be unavailing if such frauds are permitted to shield themselves behind the mask of pretended corporate ownership. A transfer of title to a corporation for the purpose of securing to the real owners and parties at interest the right to sue in the courts of the United States is none the less fraudulent than a transfer to a private individual made with a like purpose. Ownership indirectly by owning a corporation and having it hold the legal title, is none the less ownership when the purpose in forming the corporation and issuing the stock was to create and confer upon the corporators the right of suing in the courts of the United States. The formation of a corporation for this purpose is itself a fraud upon the jurisdiction of the court, and one fraud cannot legalize another. The bold and ingenuous scheme adopted in the case at bar may claim the credit of novelty. Its novelty, however, furnishes no reason why it should not be classed with all similar attempts. In protecting its jurisdiction from being imposed upon by fraud, the court should deal with each new attempt as it arises.

As said by Mr. Justice Bradley, speaking for this court in Little *vs.* Giles, 118 U. S., 569, *supra*:

> "We are satisfied that by the act of 1875 Congress intended to introduce a rule that shall put a stop to all collusive shifts and contrivances for getting such jurisdiction."

In Kreider *et al. vs.* Cole, 149 Fed. Rep., 647, is an interesting discussion of this subject by Judge Gray, speaking for the Circuit Court of Appeals of the Third Circuit. A number of cases are reviewed and the principles are clearly stated. As pointed out in this and numerous other decisions, "the federal courts have from the beginning jealously guarded against all attempts to found jurisdiction upon controversies that were not really and substantially such between citizens of different States." This rule cannot be circumvented by forming a sham corporation and making a sham transfer of title to the corporation, the corporation being owned by the persons who furnish the money out of their individual funds, and being itself without funds and without business except the business of furnishing federal court jurisdiction, and the corporation being formed and its business conducted for no other purpose.

The court below in its charge fairly submitted the issue to the jury, and the jury have determined that issue in favor of the contentions of the defendant. We submit that the verdict was right.

Respectfully submitted,

OLIN J. WIMBERLY,

Counsel for Nancy Walker, Defendant in Error.

SOUTHERN REALTY INVESTMENT COMPANY *v.* WALKER.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

No. 43. Argued December 7, 8, 1908.—Decided January 4, 1909.

A corporation organized by citizens of one State in another State simply for the purpose of bringing suits on causes of action against citizens of the former State in the Federal courts where jurisdiction would not otherwise exist, is a sham and, under § 5 of the act of March 3, 1875, c. 137, 18 Stat. 470, a suit brought by such a corporation does not really and substantially involve a dispute within the jurisdiction of the Circuit Court and should be dismissed, as soon as such facts have been ascertained.

THE facts are stated in the opinion.

Mr. Alexander C. King for plaintiff in error.

Mr. Olin J. Wimberly for defendant in error.

MR. JUSTICE HARLAN delivered the opinion of the court.

This action of ejectment was brought in the Circuit Court of the United States for the Southern District of Georgia to recover a tract of land in that State. The plaintiff, the Southern Realty Investment Company, sued as a corporation of South Dakota, while the defendant is a citizen of Georgia.

The articles of incorporation filed by the company in South Dakota stated that the purpose for which the corporation was formed was to buy, sell or lease real estate; open up farm lands and operate farms; carry on any business which may be deemed advantageous in connection with farming operations; borrow and lend money on such security as may be deemed advisable; make and furnish abstracts of title to lands; guaranty titles of lands; buy, sell, or discount notes, accounts, mortgages, bonds, judgments, executions and commercial paper of any kind; issue bonds and secure the same by mortgage or conveyance of property, real or personal, and sell, pledge or hypothecate such bonds; derive compensation and profit from such transactions; and generally to do any and everything needful to the carrying on of such business transactions.

The case was tried on a plea to the jurisdiction of the Circuit Court of the United States.

In that plea it was averred that although the petition alleged diversity of citizenship, the suit was not, in fact, one of that character, but one in which the parties have been improperly made for the purpose only of creating a case of which the Circuit Court of the United States could take cognizance; that the Southern Realty Investment Company was incorporated and organized, under the laws of South Dakota, at the instance of two named Georgia lawyers, in order that it might, under their direction, prosecute suits in the United States court that did not really and substantially involve disputes or controversies within its jurisdiction, but controversies really and substantially between citizens of Georgia; that the only business the company has is to prosecute suits in the United States courts, in its name, for those attorneys and other citizens of Georgia to recover lands and mesne profits, of which suits those courts cannot properly take cognizance; and that the present suit against citizens of Georgia has been brought, in the name of the South Dakota corporation, for the use and benefit of certain other citizens of Georgia (the real and substantial plaintiffs in interest), for the purpose of conferring an apparent jurisdiction on the Circuit Court of the United States. The defendant's prayer was that the court should take no further cognizance of the action, but should dismiss it as one not really and substantially involving a dispute or controversy properly within the jurisdiction of the court, and one in which the parties to the suit had been improperly and collusively made for the purpose of creating a case cognizable in said court.

The plea to the jurisdiction was based on the act of Congress of March 3d, 1875, c. 137, determining the jurisdiction of the Circuit Court of the United States and regulating the removal of causes from state courts. By that act (§ 5) it was provided, among other things, that if at any time after a suit is commenced in a Circuit Court of the United States it shall appear to the satisfaction of the court "that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this act, the said Circuit Court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require," etc. 18 Stat. 470, 472.

At the trial of the plea to the jurisdiction the plaintiff submitted various requests for instructions to the jury, but each of those requests was denied, the plaintiff duly excepting to the action of the court. One of the requests in effect called for a peremptory finding for the plaintiff; for, the court was asked to say to the jury that no fact was disclosed that authorized the jury to find that the suit was not one of which the Circuit Court of the United States could take cognizance. The court charged the jury, and to one part of the charge the defendant took an exception.

The verdict of the jury sustained the plea and thereupon the court dismissed the suit as one that did not really and substantially involve a dispute or controversy within the jurisdiction of the court, and as one that was collusive within the meaning of the act of Congress.

A bill of exceptions was taken which embodied all the evidence introduced by each side at the trial.

We will not extend this opinion by setting out the evidence at large. Except in its special facts and circumstances this case does not differ from cases heretofore determined under the Judiciary Act of 1875. There was evidence leading to the conclusion that the Southern Realty Investment Company was brought into existence as a corporation only that its *name* might be used in having controversies that were really between citizens of Georgia determined in the Federal rather than in the state court. It did not have, nor was it expected to have, as a corporation, any will of its own or any real interest in the property that stood or was placed in its name. It was completely dominated by the two Georgia attorneys who secured its incorporation under the laws of South Dakota through the agency of a South Dakota lawyer, who, in a letter to one of the Georgia attorneys, claimed that his office had within three years secured nine hundred and eighty-five (985) charters under the laws of that State for non-residents, and part of whose business was to "furnish" South Dakota incorporators, when necessary. In short, the plaintiff company was and is merely the agent of the Georgia attorneys, who brought it into existence as a corporation that individual citizens of Georgia, having controversies with other individual citizens of that State might, in their discretion, have the use of its corporate name in order to create cases apparently within the jurisdiction of the Federal court. It had, it is true, a president and a board of directors—all of whom were citizens of Georgia—two of the five directors being the Georgia attorneys, and one being the female stenographer of such attorneys—but the president and a majority of the directors were the holders each of only one share of donated stock and recognized it to be their duty to represent the Georgia attorneys and to obey, as they did obey, their will implicitly. The company, in respect of all its business, was the agent of those attorneys to do their bidding. Its president testified that he did not know for what purpose the company was really organized, or that it had ever done any business except "as to the bringing of these suits," or that it had any money. Its place of business in Georgia was in the office of the Georgia attorneys. Its pretended place of business in South Dakota was in what is called a domiciliary office, maintained by the attorney in that State who procured its charter. In the latter office there could have been found, no doubt, a desk and a chair or two, but no business. The company's president never knew of its doing any business in South Dakota. As a corporation the Southern Realty Investment Company must be deemed a mere sham. It has, in fact, no property or money really its own and it was not intended by those who organized it that it should become the real owner of any property of its own in South Dakota or elsewhere. It is, as already stated, simply a corporation whose name may be used by individuals when they desire for their personal benefit to create a case technically cognizable in the Federal court. Those individuals, using the name of a corporation for the benefit of themselves and their clients, citizens of Georgia, seem to be the real parties in interest in every transaction carried on in the name of the corporation.

The present case is controlled by the decisions of this court in *Williams* v. *Nottawa*, 104 U. S. 209, 211; *Morris* v. *Gilmer*, 129 U. S. 315, 328; *Lehigh Mining & Mfg. Co.* v. *Kelley*, 160 U. S. 329, 336 *et seq.*, and *Miller & Lux* v. *East Side Canal & Irrigation Co.*, 211 U. S. 293. The case is one in which it was the duty of the court, under the act of 1875, not to proceed. No error of law was committed at the trial to the substantial prejudice of the plaintiff. The charge to the jury fairly covered the issue made by the plea, and was not liable to any valid objection. The judgment must be affirmed.

It is so ordered.